

CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

Closing Date: August 1, 2000



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

Closing Date: August 1, 2000

TRANSCRIPT OF PROCEEDINGS

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>INDEX NO.</u>
<u>I. Organizational Documents</u>		
1.1	Certified copies of Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended.	1
1.2	Charter.	2
1.3	Oaths of Office of Mayor, Recorder and Council Members.	3
1.4	Rules of Procedure.	4
<u>II. Authorizing Documents</u>		
2.1	Public Service Commission Order.	5
2.2	Infrastructure Council Approval Letter.	6
2.3	Loan Agreement.	7
2.4	Rate Ordinance.	8
2.5	Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.	9
2.6	Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.	10

2.7	Bond Ordinance.	11
2.8	Supplemental Resolution.	12
2.9	Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.	13
2.10	Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.	14
2.11	Specimen Bond.	15

### III. Certificates, Receipts and Other Documents

3.1	General Certificate.	16
3.2	Certificate as to Use of Proceeds	17
3.3	Certificate of Recorder as to Truth and Accuracy of Documents Delivered.	18
3.4	Certificate of Consulting Engineer.	19
3.5	Certificate of Accountant.	20
3.6	Receipt for Bonds.	21
3.7	Receipt for Bond Proceeds.	22
3.8	Request and Authorization to Authenticate and Deliver the Bonds.	23
3.9	Registrar's Agreement.	24
3.10	Certificate of Registration of Bonds.	25
3.11	Acceptance of Appointment As Depository Bank.	26
3.12	Municipal Bond Commission New Issue Report Form.	27

3.13	Letter Evidencing Small Cities Block Grant.	28
3.14	Letter Evidencing Appalachian Regional Commission Grant.	29
3.15	Financing Statement and Certificate of Filing.	30

#### IV. Opinions

4.1	Opinion of Jackson & Kelly PLLC, Bond Counsel, regarding the Bonds.	31
4.2	Opinion of Counsel to Issuer.	32
4.3	Final Title Opinion.	33

The closing of the sale of the City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) (the "Bonds") will take place at the office of the West Virginia Water Development Authority in Charleston, West Virginia, at 11:00 a.m., prevailing time on August 1, 2000. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.

07/20/00  
009056/00301



# State of West Virginia



## Certificate

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

**THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 19 OF THE WEST VIRGINIA  
CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.**



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
July 13, 2000*

IA

*Ken Hechter*

*Secretary of State*

## ARTICLE 19.

## MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

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

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

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

8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

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

8-19-2. [Repealed.]

**Part III. Right of Eminent Domain.**

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

**Part IV. Revenue Bond Financing.**

8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

8-19-5. Publication of abstract of ordinance or order and notice; hearing.

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

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

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

8-19-9. Covenants with bondholders.

8-19-10. Operating contract.

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

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

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

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

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

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

8-19-21. Specifications for water mains and water service pipes.

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

1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1983, c. 151; 1984, c. 128; 1986, c. 118; 1986, 1st Ex. Sess., c. 18; 1989, c. 133). No detailed explanation of the changes made by the 1990 act was practicable, but, where appropriate the historical citations to the former sections have been added to corresponding sections in the amended article.

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

**Discretion.** — Action under this article is discretionary with the municipality, and a discretionary act may not ordinarily be controlled by mandamus. *Hinkle v. Town of Franklin*, 118 W. Va. 585, 191 S.E. 291 (1937) (decided under prior law).

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

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

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

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

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

(b) Any municipality or county commission which intends to file an application with the federal energy regulatory commission for a license to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system, shall give written notice by certified mail, return receipt requested, and shall give public notice by Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code and the publication area shall be the municipality or county in which the system is to be located to the governing body of the municipality or the county commission in which such system is or shall be located or, if such system is or shall be located outside of a municipality or county, to the county commission of the county in which such system is or

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

**Revision of article.** — Acts 1990, c. 141, amended and reenacted this article, substituting present §§ 8-19-1 to 8-19-20 for former §§ 8-19-1 to 8-19-12a, and 8-19-13 to 8-19-20 enacted by Acts 1933, c. 26, §§ 1, 3-14 and amended by Acts 1933, 2nd Ex. Sess., c. 49; 1937, c. 52; 1939, c. 97, c. 98, § 10; 1949, c. 90; 1955, c. 133; 1961, cc 104, 105; 1967, c. 105; 1969, c. 86; 1970, c. 7; 1971, c. 103; 1978, c. 72.

shall be located, at least sixty days prior to the filing of such application. Provided, That the provisions of this subsection shall not apply to any municipality or county commission which, on the date of the passage of this act (Acts 1990, c. 141; March 10, 1990), has obtained a license from the federal energy regulatory commission to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system. If the municipality or county commission receiving such notice does not respond to the notice within sixty days of receipt of such notice, then such other municipality or the county commission shall be deemed to have consented to the application for the proposed electric power system. If such other municipality or the county commission notifies the municipality or county commission that it objects to the proposed electric power system, such other municipality or the county commission shall hold a public hearing on the proposed system within sixty days of receipt of such notice from the municipality or county commission.

(c) As used in this article:

(1) "Waterworks system" means a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

(2) "Electric power system" means a system or facility which produces electric power in its entirety or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof, or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system. (1933, Ex. Sess., c. 26, § 1; 1937, c. 52; 1939, c. 97; 1949, c. 90; 1955, c. 133; 1969, c. 86; 1978, c. 72; 1983, c. 151; 1986, c. 118; 1986, 1st Ex. Sess., c. 18; 1990, c. 141.)

**Cross references.**—Acquisition and operation of combined waterworks and sewerage systems, § 8-20-1 et seq.

**ALR references.**—Right to compel municipality to extend its water system, 48 ALR2d 1222.

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

§ 8-19-2.

Repealed by Acts 1974, c. 78.

**Editor's notes.**—Former § 18-19-2, concerning limitations on sale or lease of certain municipal waterworks, was repealed by Acts 1974, c. 78.

PART III. RIGHT OF EMINENT DOMAIN.

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

For the purpose of acquiring, constructing, establishing or extending any waterworks system or electric power system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality or county commission shall have the right of eminent domain as provided in chapter fifty-four (§ 54-1-1 et seq.) of this code: Provided, That such right of eminent domain for the acquisition of a privately owned waterworks system, or electric power system, or any part thereof, shall not be exercised without prior approval of the public service commission, and in no event shall any municipality or county commission construct, establish or extend beyond the corporate limits of said municipality or county line a municipal or county waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally or county owned waterworks or electric power system in such municipality or county or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission: Provided, however, That a municipality or county commission may not exercise such right of eminent domain over a privately owned electric power system or any part thereof for the purpose of acquiring, constructing, establishing or extending an electric power system.

Subject to the provisions of this article and notwithstanding the provisions of section nineteen (§ 8-12-19), article twelve of this chapter to the contrary, a municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, electric generators or electric generating systems or electric transmission systems more than one mile beyond the corporate limits of such municipality or county line and said electric generation systems shall not be under the jurisdiction of the public service commission. (1933, Ex. Sess., c. 26, § 9; 1937, c. 52; 1969, c. 86; 1978, c. 72; 1983, c. 151; 1990, c. 141.)

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

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

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

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

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may by ordinance or order specify. All such bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by such municipality or county. Provided, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for such real and personal property (1) physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed such electric power system and there was in place prior to the effective date of the amendments to this section made in the year one thousand nine hundred ninety-two an agreement between the municipality and the county commission for payments in lieu of tax, or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Provided, however, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. Such bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal

at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, such ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds. (1933, Ex. Sess., c. 26, § 3, 1933, 2nd Ex. Sess., c. 49, 1955, c. 133; 1969, c. 86; 1970, c. 7; 1978, c. 72; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1984, c. 128; 1986, 1st Ex. Sess., c. 18; 1990, c. 141; 1992, c. 147.)

*Editor's notes.* — This section refers to "the ninety-two." Acts 1992, c. 147 provided that the effective date of the amendments to this section shall be July 1, 1992.

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

After the ordinance or order for any project under this article has been adopted, an abstract of the ordinance or order, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance or order, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three (§ 59-3-1 et seq.), chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county. The notice to be published with said abstract of the ordinance or order shall state that said ordinance or order has been adopted, that the municipality or county commission contemplates the issuance of the bonds described in the ordinance or order, that any person interested may appear before the governing body, upon a certain date, which shall be not less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication by such abstract and notice, and present protests, and that a certified copy of the ordinance or order is on file

with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it considers proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality or county, then the governing body of said municipality or county shall not take further action unless four fifths of the qualified members of said governing body assent thereto. (1933, Ex. Sess., c. 26, § 4; 1967, c. 105; 1969, c. 86; 1971, c. 103; 1981, 1st Ex. Sess., c. 2; 1990, c. 141.)

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

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality or county commission, and be sealed with the corporate seal of the municipality or certified by the county commission, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance or order authorizing the issuance of the bonds. (1933, Ex. Sess., c. 26, § 5; 1933, 2nd Ex. Sess., c. 49, § 5; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1984, c. 128; 1990, c. 141.)

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

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality or county within the meaning of any constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality or county within constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve (§ 8-19-12(b)) of this article, the ordinance or order authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued. (1933, Ex. Sess., c. 26, § 6; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

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

Any municipality or county commission in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six (§ 8-19-6) of this article. Any revenue bonds so issued to provide financing for such existing waterworks or electric power system or for any improvements to an existing waterworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality or county commission in property related thereto as determined by the municipality or county commission in the ordinance or order authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality or county were obligated to pay the full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged. (1933, Ex. Sess., c. 26, § 7; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72; 1986, 1st Ex. Sess., c. 18; 1990, c. 141.)

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

Any ordinance or order authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality or county commission is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks or electric power system may be

applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

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

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

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

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

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

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

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

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

Any such ordinance, order or trust indenture may also contain such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities or county commissions plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities and counties full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state. (1955, c. 133; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

**§ 8-19-10. Operating contract.**

Any such municipality or county commission may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality or county commission and such persons. Any such municipality or county commission shall have plenary power and authority to provide in the ordinance or order authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality and county commission as long as any of said bonds, or interest thereon, is outstanding and unpaid. (1955, c. 133; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

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

above that which the municipality or county commission shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and, if any surplus shall exist in the bond and interest redemption account, the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account. (1933, Ex. Sess., c. 26, § 8; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

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

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

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon. (1933, Ex. Sess., c. 26, § 11; 1969, c. 86; 1978, c. 72; 1986, c. 118; 1990, c. 141.)

**§ 8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.**

(a) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(b) All rates or charges for water service whenever delinquent as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1989, c. 133; 1990, cc. 140, 141.)

**Editor's notes.** --- This section was amended twice in 1990, first by c. 141 (passed March 10, and in effect from passage) and then by c. 140 (passed March 10, and effective 90 days from passage). The text set out above reflects the amendment by c. 140.

As amended by c. 141, this section reads: "(a) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however: That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate the user's lease of the premises concerned.

"(b) All rates or charges for water service whenever delinquent, as provided by ordinance of the municipality or order of the county commission, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality or county commission shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality or

County commission shall have exhausted all remedies available against such delinquent users before it may proceed in a civil action against the owner.

"(c) Municipalities and county commissions are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges: If the municipality or county commission collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality or county commission shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

"(d) No municipality or county commission may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county or the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality or county commission had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or county commission or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought."

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

Any such municipality or county commission shall also have plenary power and authority and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water or electric power service of said waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service. (1955, c. 133; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

Whenever any municipality or county commission shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided for the issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system or electric power system in a

municipality or county which has not heretofore owned and operated a waterworks or electric power system: Provided, That nothing in this article shall be construed as authorizing any municipality or county commission to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting aside and segregation of such revenues for the construction of such additions, betterments or improvements only where and to the extent consistent with outstanding obligations of such municipality or county commission, and in accordance with the provisions of this article. (1933, Ex. Sess., c. 26, § 10; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

Any municipality or county commission operating a waterworks or electric power system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such waterworks or electric power system and the application of the same. At least once each year such municipality or county commission shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times. (1939, c. 98, § 10; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section eight of this article, protect and enforce any and all rights granted hereunder or under any such ordinance, order or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance, order or trust indenture to be performed by the municipality or county commission, or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the waterworks or electric power system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said waterworks or electric power system on behalf of the municipality or county commission, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued or any trust indenture, or both. (1933, Ex. Sess., c. 26, § 12; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

Rules of Civil Procedure. — As to receivers, see Rule 66.

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

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

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

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality or county and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources specified in this section. (1961, c. 105; 1969, c. 86; 1978, c. 72; 1981, 1st Ex. Sess., c. 2; 1986, c. 118; 1986, 1st Ex. Sess., c. 18; 1990, c. 141.)

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

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

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

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1978, c. 72; 1986, 1st Ex. Sess., c. 18; 1990, c. 141.)

PART VI. OPERATION BY BOARD; CONSTRUCTION.

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

As an alternative to the procedures hereinabove provided, any municipality or county commission is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks or an electric power system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such

governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§ 8-16-1 et seq.] of this chapter. (1961, c. 104; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

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

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes. (1933, Ex. Sess., c. 26, § 14; 1969, c. 86; 1990, c. 141.)

**§ 8-19-21. Specifications for water mains and water service pipes.**

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs, constructs, maintains, or upgrades water mains, shall ensure that all new mains specifically intended to provide fire protection are supplied by mains which are not less than six inches in diameter. A permit or other written approval shall be obtained from the department of health and human resources for each hydrant or group of hydrants installed in compliance with section nine [§ 16-1-9], article one, chapter sixteen of the West Virginia code as amended; Provided, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are desired or required by the public or private utility; Provided, however, That the utility providing service has sufficient hydraulic capacity as determined by the department of health and human resources. (1994, c. 31.)

**ARTICLE 20.**

**COMBINED WATERWORKS AND SEWERAGE SYSTEMS.**

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

- |   |  |
|---|--|
| <p>Sec. 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.</p> <p>8-20-1a. Cooperation with other governmental units.</p> <p>8-20-1b. Severance of combined system.</p> <p><b>Part II. Right of Eminent Domain.</b></p> <p>8-20-2. Right of eminent domain; limitations.</p> <p><b>Part III. Revenue Bond Financing.</b></p> <p>8-20-3. Ordinance describing project; contents.</p> | <p>Sec. 8-20-4. Publication of abstract of ordinance and notice; hearing.</p> <p>8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.</p> <p>8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.</p> <p>8-20-7. Lien of bondholders.</p> <p>8-20-8. Covenants with bondholders.</p> <p>8-20-9. Operating contract.</p> <p>8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates</p> |
|---|--|

- |   |   |
|---|---|
| <p>Sec. 8-20-11. Discontinuance of water service for nonpayment of rates or charges.</p> <p>8-20-12. Use of revenues; sinking fund.</p> <p>8-20-13. System of accounts; audit.</p> <p>8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.</p> <p>8-20-15. Protection and enforcement of rights of bondholders, etc.; receiver-ship.</p> <p><b>Part IV. Grants, Loans and Advances; Cumulative Authority.</b></p> <p>8-20-16. Grants, loans and advances.</p> <p>8-20-17. Additional and alternative method for</p> | <p>Sec. 8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage systems.</p> <p><b>Part V. Operation by Board; Construction.</b></p> <p>8-20-19. Article to be liberally construed.</p> |
|---|---|

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

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

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

**§ 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.**

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law,

# State of West Virginia



## Certificate

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

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13C OF THE WEST  
VIRGINIA CODE, AND CHAPTER 16, ARTICLE 13C OF THE 2000 CUMULATIVE  
SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE  
RECORDS OF THIS OFFICE.**



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
July 13, 2000*

18

*Ken Hechter*

*Secretary of State*

therefor in the manner hereinabove provided from the date of the original assessment, with interest therefrom, and proper assessment certificate may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements had the assessments therefor been then properly laid and levied. (1992, c. 150.)

**§ 16-13B-20. How additional territory may be added to assessment district.**

(a) A governing body may, with respect to any assessment district created by it, modify, expand or extend the boundaries of the assessment district to develop, construct, improve or extend any project, or to enable persons residing or engaged in business on property located outside the assessment district to obtain the services provided by a wastewater or water facility, (1) by satisfying the same requirements provided in this article for the creation of the assessment district, or (2) upon the unanimous written agreement of persons owning all of the property to be added to the assessment district that such property be added to the district and assessed in accordance with subsection (b) of this section: Provided, That no property may be added to an assessment district for connection to a wastewater or water project unless it abuts the assessment district.

(b) Any property added to an assessment district shall be assessed for and bear a proportionate share of the cost of the project then remaining unpaid, consistent with the concepts and principles set forth in sections eleven and twelve [§§ 16-13B-11 and 16-13B-12] of this article and the assessment so laid shall be a lien upon the property in the same manner hereinabove provided from the date such assessment is laid. Contemporaneously with the resolution laying the assessment against such property, all other property located in the assessment district shall be reassessed to reflect the addition of such property to the assessment district. In all such cases, the assessment district shall be the holder of the assessment certificates issued to evidence the assessments laid upon the added property, and all assessment fees received by the sheriff from such assessment certificates shall be applied, pro rata, to reduce the final installment of principal and interest due from the owners of all other property located in the assessment district as it existed prior to the addition of property to the district.

(c) If any property is connected to a wastewater or water project after the cost of the project has been paid in full and the transfer of the project to a utility or governmental agency pursuant to section twenty-one [§ 16-13B-21] of this article, the owner of such property shall pay to the utility or governmental agency the same rates and charges paid by other customers of the utility or governmental agency for the services provided by the wastewater or water facility operated and maintained by it. (1992, c. 150.)

**§ 16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.**

(a) Prior to the construction of a wastewater or water project, the assessment district in which the project shall be located shall enter into one or more agreements with a utility or governmental agency operating a wastewater or water facility within the service area covered by the assessment district for the operation and maintenance of the project and for the provision of wastewater or water services, as the case may be, and such utility or governmental agency shall thereupon be authorized and empowered to charge and collect from each person connected to the project such rates and charges customarily paid by customers of such utility or governmental agency for similar wastewater or water services. All such agreements shall have terms of duration equal to or greater than the period necessary for the cost of the project to be paid in full, and may otherwise contain such terms and conditions as may be mutually agreed to by the parties, and shall be presented as part of the application to the public service commission required by section ten (c) [§ 16-13B-10(c)] hereof.

(b) Immediately upon the final payment of all assessment fees due under all assessment certificates issued in connection with a wastewater or water project constructed within an assessment district, the assessment district shall transfer and convey all of its right, title and interest in and to such project to the utility or governmental agency providing wastewater or water services, as the case may be. (1992, c. 150.)

**§ 16-13B-22. Liberal construction.**

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose hereof. (1992, c. 150.)

ARTICLE 13C.

**DRINKING WATER TREATMENT REVOLVING FUND ACT.**

Sec.	Definitions.	Sec.	ing fund: duties of division of health and water development authority: set-aside accounts.
16-13C-1.	Designations of health as state instrumentality: rules: small systems: disadvantaged communities.	16-13C-4.	Management of funds.
16-13C-2.		16-13C-5.	Remedies to enforce payment.
16-13C-3.	Drinking water treatment revolving communities.	16-13C-6.	Construction of article.

**§ 16-13C-1. Definitions.**

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

- (1) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one, chapter twenty-two-c of this code.
- (2) "Capacity development" means the technical, managerial and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal safe drinking water act" means the federal statute commonly known as the "Safe Drinking Water Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

(6) "Fund" means the West Virginia drinking water treatment revolving fund created in this article.

(7) "Instrumentality" means the division of health which shall have the primary responsibility for administering the fund and this article pursuant to requirements of the federal safe drinking water act.

(8) "Local Entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state which is empowered to construct and operate an eligible project.

(9) "Public water system" means that term as defined in section nine-a [§ 16-1-9a], article one, chapter sixteen of the code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that may be set up for activities required by the federal safe drinking water act and the moneys for these accounts may be taken from the federal capitalization grant for these nonproject activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving 10,000 or fewer persons. (1997, c. 225.)

**§ 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.**

(a) The division of health shall act as the instrumentality that is hereby empowered to enter into capitalization agreements with the United States Environmental Protection Agency, to accept capitalization grant awards made under the federal safe drinking water act, and to direct the administration and management of the drinking water treatment revolving fund created in this article in accordance with the requirements of federal law.

(b) The division of health shall propose rules for legislative approval in accordance with provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of the code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disburse-

ment of fund moneys; and (5) establishment of a drinking water treatment revolving fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization grants made to this state shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal safe drinking water act. The division of health shall enter into contracts to provide technical assistance services for small systems with such nonprofit organizations that: (1) Have a membership that represent at least twenty-five percent of the small systems of this state; and (2) have at least five years experience in providing on-site technical assistance to small systems.

(d) The division of health shall, in accordance with the provisions of the federal safe drinking water act, establish a program for loan subsidies to disadvantaged communities. Thirty percent of the annual federal capitalization grants made to this state shall be dedicated to the funding of projects for disadvantaged communities. (1997, c. 225.)

**§ 16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.**

(a) There is hereby created in the office of the state treasurer a special fund to be known as the "West Virginia drinking water treatment revolving fund". The fund shall be administered and managed in accordance with the provisions of the federal safe drinking water act.

(b) The fund shall be administered and managed by the water development authority under the direction of the division of health. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal safe drinking water act.

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

(d) The authority shall propose rules for legislative approval in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with the provisions of this code. Disburse-

ments from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. Notwithstanding any provision of this code to the contrary, amounts in the fund shall be deposited by the authority in one or more banking institutions. Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the authority by competitive bid. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal safe drinking water act, set-aside accounts may be set up in accounts separate from the drinking water treatment revolving fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal safe drinking water act. The division of health shall direct the authority to establish and administer the set-aside accounts as permitted by the federal safe drinking water act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program. (1997, c. 225.)

**§ 16-13C-4. Management of funds.**

The authority shall manage the funds received pursuant to the provisions of this article for accounting purposes. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year and the cost thereof may be defrayed as administrative expense under provisions of this article. The audit shall be conducted by a certified public accountant and provide an auditor's opinion on the fund financial statements, a report on the internal controls and a report prepared in compliance with the provisions of the drinking water treatment revolving fund. (1997, c. 225.)

**§ 16-13C-5. Remedies to enforce payment.**

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

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

(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the

local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

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

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

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

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

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1997, c. 225.)

**§ 16-13C-6. Construction of article.**

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1997, c. 225.)

ARTICLE 14.

**BARBERS AND COSMETOLOGISTS.**

Sec.	16-14-1.	Jurisdiction over barbers and cosmetologists; powers and duties of director of health.	Sec.	16-14-3.	Regulations to be promulgated by board of health; enforcement.
	16-14-2.	Barbering, beauty culture and manicuring defined.		16-14-4 to 16-14-17.	[Repealed.]

**Editor's notes.** — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225, **Michele's Jurisprudence.** — For a general treatment of barbering and beauty culture, see 3A M.J., Barbers and Cosmetologists.

**§ 16-14-1. Jurisdiction over barbers and cosmetologists; powers and duties of director of health.**

(a) There is hereby vested in the state department of health jurisdiction over barbers and cosmetologists, except as otherwise specifically provided in this code.

**MICHIE'S™  
WEST VIRGINIA  
CODE  
ANNOTATED**

**VOLUME 5A**

1998 Replacement Volume

**2000 SUPPLEMENT**

*Including Acts passed during the  
2000 Regular and First Extraordinary Sessions*

Prepared by the Editorial Staff of the Publisher

**Place in pocket of corresponding bound volume**

**LEXIS Publishing™**

LEXIS® NEXIS® • MARTINDALE-HUBBELL®  
MATTHEW BENDER® • MICHIE® SHEPARD'S®

The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or

counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159; 2000, c. 199.)

*Effect of amendment of 2000.* — Acts 2000, c. 199, effective June 9, 2000, rewrote the section.

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; expropriation powers.**

Superior right of municipality to extend public services. — If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right under this section to extend public services, such as water and/or sewer service, which were not being previously furnished to the tract by the public service district. Berkeley County Pub. Serv. Dist. v. West Va. Pub. Serv. Comm'n, 204 W. Va. 279, 512 S.E.2d 201 (1998).

ARTICLE 13C.

**DRINKING WATER TREATMENT REVOLVING FUND ACT.**

Sec. 16-13C-1. Definitions. 16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.

**§ 16-13C-1. Definitions.**

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

(1) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one, chapter twenty-two-c of this code.

(2) "Capacity development" means the technical, managerial and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal safe drinking water act" means the federal statute commonly known as the "Safe Drinking Water Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

(6) "Fund" means the West Virginia drinking water treatment revolving fund created in this article.

(7) "Instrumentality" means the division of health which has the primary responsibility for administering the fund and this article pursuant to requirements of the federal safe drinking water act.

(8) "Local entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state which may construct and operate an eligible project.

(9) "Public water system" means that term as defined in section nine-a § 16-1-9a), article one, chapter sixteen of the code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act and the moneys for these accounts may be taken from the federal capitalization grant for these nonproject activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving ten thousand or fewer persons. (1997, c. 225; 1998, c. 170.)

Effect of amendment of 1998. — The tuted "may construct" for "is empowered to amendment, effective June 10, 1998, in (7), construct"; in (11), substituted "shall be set up," substituted "has" for "shall have"; in (8), substi- for "may be set up"; and made stylistic changes.

**§ 16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.**

(a) There is continued in the office of the state treasurer a permanent and perpetual special fund to be known as the "West Virginia drinking water treatment revolving fund". The fund shall be administered and managed in accordance with the provisions of the federal Safe Drinking Water Act. The division of health may draw all or a portion of those moneys available under capitalization agreements and with the capitalization grant awards from the United States environmental protection agency under the federal Safe Drinking Water Act and to deposit such moneys into the fund and the set-aside accounts.

(b) The fund, less the set-aside account moneys, shall be administered and managed by the water development authority under the direction of the division of health. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal Safe Drinking Water Act.

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

(d) The authority shall propose legislative rules for promulgation in accordance with the provisions of article three § 29A-3-1 et seq., chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

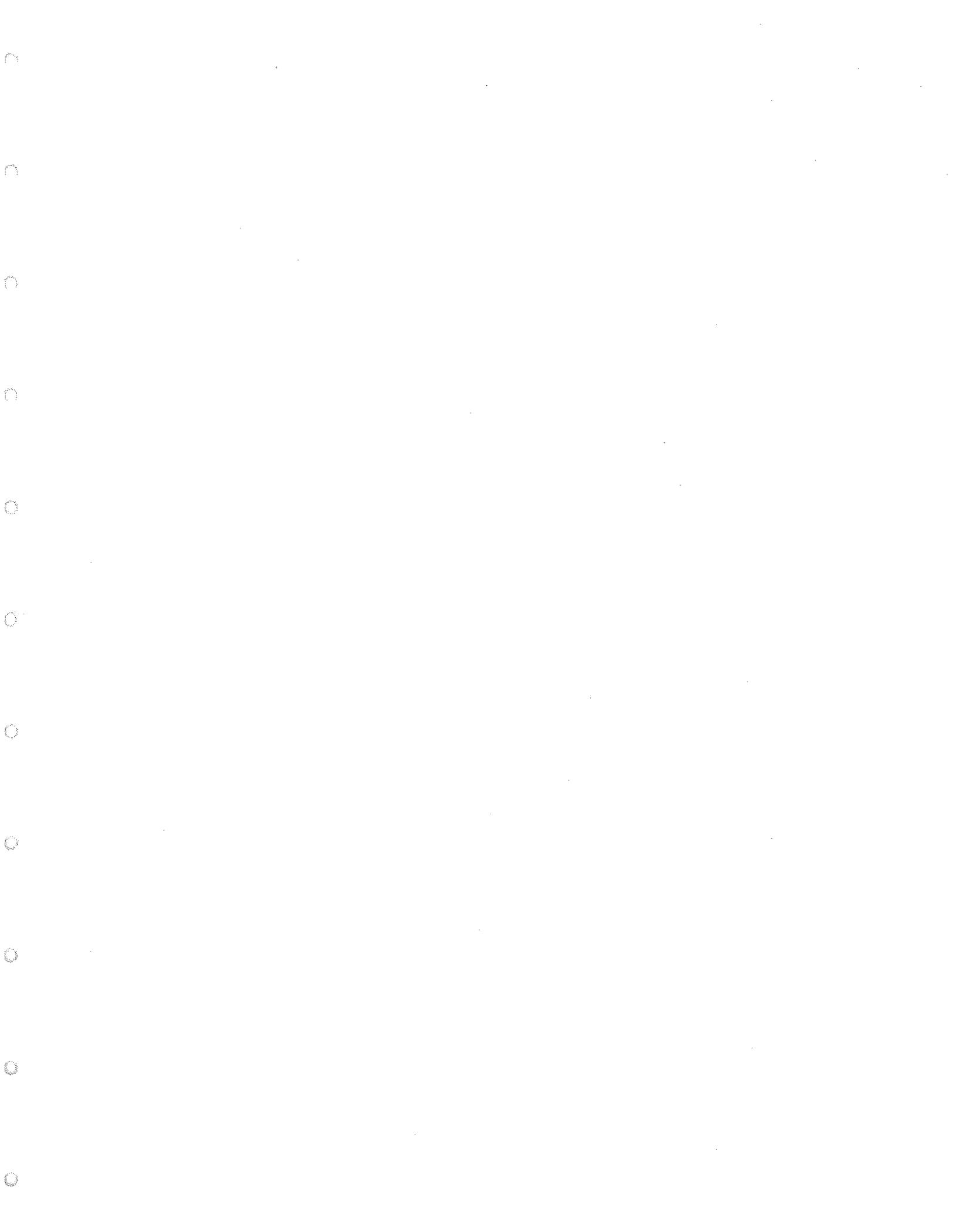
(f) Pursuant to the provisions of the federal Safe Drinking Water Act, set-aside accounts shall be set up in accounts separate from the drinking water treatment revolving fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal Safe Drinking Water Act. The division of health shall establish and administer the set-aside accounts as permitted by the federal Safe Drinking Water Act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program. (1997, c. 225; 1998, c. 170.)

Effect of amendment of 1998. — The (c), inserted "and the division of health" following amendment, effective June 10, 1998, in (a), substituted "continued" for "thereby created," inserted "permanent and perpetual" preceding "special fund," and added the last sentence; in (b), in the first sentence, inserted "less the set-aside account moneys," and in the second sentence, inserted "and set-aside accounts"; in

**ARTICLE 13D.**

**REGIONAL WATER AND WASTEWATER AUTHORITY ACT.**

Sec. 16-13D-1.	Statement of purpose.	Sec. 16-13D-4.	Furnishing of funds; personnel or retirement of bonds.
16-13D-2.	Definitions.		
16-13D-3.	Joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to public service commission; filing of agreement;		Prohibition against competition; services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation and treatment of



File  
Keep in Office

**CHARTER OF THE CITY  
OF  
GARY, WEST VIRGINIA**

CHARTER OF THE CITY  
OF  
GARY, WEST VIRGINIA

*1/2 square mile*

TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I INCORPORATION; FORM OF GOVERNMENT; POWERS</u>	
Section 1.100 Incorporation	1
Section 1.200 Form of Government	1
Section 1.300 Powers of City	1
<u>ARTICLE II CORPORATE LIMITS</u>	
	2 - 4
<u>ARTICLE III BOUNDARIES OF WARDS; REDISTRICTING</u>	
Section 3.100 Boundaries of Wards	5
Section 3.200 Council Redistricting	6
<u>ARTICLE IV ELECTIONS</u>	
Section 4.100 General Election Laws to Control; Terms of Officers	7
Section 4.200 Voter Qualifications	7
Section 4.300 Voter Registration	7
Section 4.400 Primary Elections	8 - 9
Section 4.401 First Primary Election and Special Election	9
Section 4.402 Municipal Party Executive Committees: How Composed	9
Section 4.403 Terms of Members of Executive Committees	10
Section 4.500 General Elections	10
Section 4.600 Conduct of Elections	10 - 11
Section 4.700 Tie Vote Procedures	11
Section 4.800 Contested Election Procedures	12
Section 4.900 Council to Provide for Independent Party or Group Participation	12
<u>ARTICLE V MUNICIPAL AUTHORITIES</u>	
Section 5.100 Organization of Council	13
Section 5.200 Qualifications of Councilmen and City Officers	13
Section 5.300 Powers of City Council	13
Section 5.400 Meetings of Council	13 - 14
Section 5.500 Tie Vote - Council Proceedings	14
Section 5.600 Quorum	14
Section 5.700 Filling Vacancy - Council Members of City Officer	14

*population  
2580*

ARTICLE VI ELECTION OFFICERS

Section 6.100	Oath of Office for Elected Officers	15
Section 6.200	Term of Office for Elected Officers	15
Section 6.300	Ineligible Elected Officer	15 - 16
Section 6.400	Powers and Duties of the Mayor	16
Section 6.500	Compensation of the Mayor	17
Section 6.600	Duties of the Recorder	17
Section 6.700	Compensation of the Recorder	17
Section 6.800	Removal of Elected Officers	17

ARTICLE VII APPOINTIVE OFFICERS - DUTIES OF OFFICERS

Section 7.100	Power of Council to Make Appointments	18
Section 7.200	Removal of Appointed Officers	18
Section 7.300	Chief of Police	18 - 19
Section 7.400	City Attorney	20
Section 7.500	City Treasurer	20
Section 7.600	City Health Commissioner and City Board of Health	20 - 21

ARTICLE VIII RECORD BOOKS

Section 8.100	Minute Book - City Council	22
Section 8.200	Ordinance Book	22
Section 8.300	Record of Bonds	22 - 23
Section 8.400	Police Docket	23

ARTICLE IX FINANCES

Section 9.100	Payment of City Funds	24
Section 9.200	Taxation	24
Section 9.300	Assessment and Collection of Taxes	24
Section 9.400	Bond Issues	24 - 25
Section 9.500	Official Bonds	25
Section 9.600	Indebtedness Prohibited	26

ARTICLE X      ORDINANCES; LICENSES; CONDEMNATION

Section 10.100	Ordinances	27
Section 10.200	Licenses Prescribed by Ordinance	27 - 28
Section 10.300	Condemnation Proceedings	28

ARTICLE XI      FRANCHISES

Section 11.100	Franchises Granted by Council	29
Section 11.200	Proposals Made Public	29
Section 11.300	Time Limit - Franchises	29
Section 11.400	City to be Indemnified Against Damages	30
Section 11.500	Franchise - Extensions	30

ARTICLE XII     ROADS AND STREETS

Section 12.100	Maintain Roads and Streets	31
----------------	----------------------------	----

CHARTER OF THE CITY OF  
GARY, WEST VIRGINIA

ARTICLE I

INCORPORATION; FORM OF GOVERNMENT; POWERS

Section 1.100. Incorporation. The inhabitants of so much of the County of McDowell, in the State of West Virginia, included in the boundaries described in Article II of this Charter, be and they are hereby created and are to remain and continue a municipal corporation by the name of the City of Gary, by which name it shall have perpetual succession and a common seal, and by which it may sue and be sued, plead and be impleaded, contract and be contracted with, purchase and otherwise acquire and hold real estate and personal property needed in the discharge of the functions of government conferred by this Charter.

Section 1.200. Form of Government. The municipal government provided by this charter shall be the "Mayor-Council Plan".

Section 1.300. Powers of City. This city, incorporated under the municipal home rule act, shall have all the powers granted to municipal corporations and to cities of its class by the constitution and laws of the State of West Virginia, together with all the implied powers necessary to carry into execution all the powers granted.

ARTICLE II - CORPORATE LIMITS

Section 2.100. The corporate limits of the City of Gary shall be as follows:

FROM	TO	COURSE	DIST. FT.	*CO-ORD.	*CO-ORD.
	1			N 6008.38	W 3186.75
1	2	S 34°51' W	819.05	N 5336.23	W 3654.67
2	3	S 51°10' W	605.00	N 4956.86	W 4125.85
3	4	S 38°50' E	60.00	N 4910.12	W 4088.23
4	5	S 60°56' E	840.02	N 4502.00	W 3354.00
5	6	S 43°25' E	536.92	N 4112.00	W 2985.00
6	7	S 11°56' E	58.12	N 4055.14	W 2972.99
7	8	S 11°09' E	268.49	N 3791.58	W 2921.13
8	9	S 47°51' W	549.25	N 3423.05	W 3328.37
9	10	S 57°13' E	923.46	N 2923.00	W 2552.00
10	11	S 35°21' E	573.79	N 2455.00	W 2220.00
11	12	S 0°13' E	530.01	N 1925.00	W 2218.00
12	13	S 30°57' W	800.00	N 1238.90	W 2629.43
13	14	S 22°35' E	475.30	N 800.00	W 2446.90
14	15	N 87°24' E	274.74	N 812.46	W 2172.44
15	16	N 81°14' E	394.84	N 872.64	W 1782.21
16	17	N 71°25' E	348.92	N 983.83	W 1451.48
17	18	N 81°25' E	257.15	N 1022.21	W 1197.21
18	19	S 69°11' E	308.43	N 912.60	W 908.84
19	20	S 60°51' E	323.31	N 755.12	W 626.48
20	21	S 40°18' E	274.91	N 545.45	W 448.67
21	22	S 0°50' W	310.46	N 235.02	W 453.19
22	23	S 19°17' E	173.18	N 71.56	W 396.00
23	24	S 46°10' E	201.33	S 67.87	W 250.77
24	25	N 74°51' E	259.80	000.00	000.00
25	26	N 51°22' E	1063.38	N 663.68	E 830.67
26	27	S 72°41' E	582.58	N 490.25	E 1386.84
27	28	S 75°18' E	1039.61	N 226.42	E 2392.71
28	29	S 85°38' E	609.06	N 180.00	E 3000.00
29	30	S 49°40' E	278.11	000.00	E 3212.00
30	31	S 31°44' E	372.72	S 317.00	E 3408.00
31	32	S 4°47' E	263.92	S 580.00	E 3430.00
32	33	S 21°28' E	483.54	S 1030.00	E 3607.00
33	34	S 49°31' E	161.72	S 1135.00	E 3730.00
34	35	S 87°24' E	1724.18	S 1213.26	E 5452.40
35	36	N 64°57' E	182.76	S 1135.85	E 5617.97
36	37	S 89°19' E	567.16	S 1142.71	E 6185.08
37	38	N 58°47' E	449.51	S 909.75	E 6569.50
38	39	N 49°54' E	1830.91	N 270.00	E 7970.00
39	40	N 66°37' E	680.12	N 540.00	E 8594.26
40	41	N 9°35' W	965.91	N 1492.95	E 8433.53
41	42	N 21°35' E	434.06	N 1896.42	E 8593.20
42	43	N 31°13' E	118.53	N 1957.85	E 8694.59
43	44	S 81°00' E	79.00	N 1945.49	E 8772.62
44	45	Southeasterly	1422.00	N 600.00	E 8865.00
45	46	N 44°05' E	438.31	N 914.92	E 9170.00
46	47	N 82°48' E	398.95	N 964.92	E 9565.80
47	48	S 87°58' E	508.74	N 946.87	E10074.21
48	49	S 36°45' E	1095.00	N 69.50	E10729.37
49	50	S 17°15' E	254.94	S 173.94	E10804.97

<u>FROM</u>	<u>TO</u>	<u>COURSE</u>	<u>DIST. FT.</u>	<u>*CO-ORD.</u>	<u>*CO-ORD.</u>
50	51	Northeasterly	560.00	N 18.00	E11330.00
51	52	N 68°42' E	335.86	N 140.00	E11643.00
52	53	N 62°07' E	213.82	N 240.00	E11832.00
53	54	N 26°00' E	374.14	N 576.30	E11996.01
54	55	S 81°13' E	140.00	N 554.92	E12134.37
55	56	Southwesterly	690.00	S 49.00	E11782.00
56	57	Southeasterly	4823.00	S 3700.12	E13476.09
57	58	S 44°10' W	96.00	S 3768.98	E13409.20
58	59	Northwesterly	1425.00	S 362.96	E11708.67
59	60	S 52°45' W	134.00	S 444.05	E11602.05
60	61	S 56°29' W	964.56	S 828.72	E10717.61
61	61A	N 29°42' W	200.00	S 655.20	E10618.52
61A	62	N 9°52' W	695.28	N 29.80	E10499.38
62	63	Northwesterly	1475.00	N 655.00	E 9635.00
63	64	S 7°28' W	277.41	N 380.01	E 9598.95
64	65	S 65°13' W	480.45	N 178.61	E 9162.69
65	66	N 30°00' W	260.00	N 403.78	E 9032.69
66	67	Southwesterly	4950.00	S 1730.00	E 4640.92
67	68	S 9°13' W	357.93	S 2083.20	E 4583.59
68	69	S 85°16' W	620.46	S 2134.40	E 3965.25
69	70	N 66°17' W	581.66	S 1900.45	E 3432.72
70	71	N 22°47' W	323.20	S 1602.53	E 3307.56
71	72	N 39°30' E	295.00	S 1374.90	E 3495.20
72	73	Northwesterly	1950.00	S 11.00	E 2339.00
73	74	S 6°42' E	180.00	S 189.77	E 2360.00
74	75	S 61°28' W	183.00	S 277.18	E 2199.23
75	76	S 77°18' W	1577.53	S 624.00	E 660.00
76	77	S 13°17' W	199.75	S 818.40	E 614.14
77	78	S 11°58' W	581.00	S 1386.77	E 493.68
78	79	Southeasterly	7920.00	S 8409.02	E 3478.00
79	80	S 87°30' E	275.00	S 8421.02	E 3752.74
80	81	S 39°21' W	386.61	S 8719.97	E 3507.61
81	82	S 77°37' W	80.00	S 8737.13	E 3429.47
82	83	Southwesterly	1100.80	S 9863.00	E 3269.00
83	84	S 34°33' E	495.00	S10271.00	E 3550.00
84	85	S 21°38' E	555.85	S10787.47	E 3754.92
85	86	S 67°11' W	138.89	S10841.33	E 3626.93
86	87	Southeasterly	1340.00	S11580.00	E 4752.00
87	88	S 38°22' W	135.00	S11685.85	E 4668.21
88	88A	N 50°45' W	636.91	S11283.00	E 4175.00
88A	89	N 64°25' W	594.99	S11026.06	E 3638.34
89	90	S 75°55' W	137.66	S11059.57	E 3504.82
90	91	Southwesterly	1354.00	S12114.88	E 2692.11
91	92	S 42°32' W	1405.96	S13300.00	E 1936.00
92	93	Southeasterly	1750.00	S14836.42	E 2328.01
93	94	S 14°33' E	209.09	S15038.86	E 2380.54
94	95	S 13°13' W	824.65	S15842.00	E 2192.00
95	96	N 88°20' E	96.03	S15840.00	E 2261.00
96	97	S 20°49' E	540.26	S16345.00	E 2453.00

<u>FROM</u>	<u>TO</u>	<u>COURSE</u>	<u>DIST. FT.</u>	<u>*CO-ORD.</u>	<u>*CO-ORD.</u>
97	98	S 12°13' W	713.58	S17042.00	E 2302.00
98	99	S 38°37' W	451.84	S17395.00	E 2020.00
99	100	N 71°26' W	135.02	S17352.00	E 1892.00
100	101	Northeasterly	6850.00	S11142.74	E 3176.74
101	102	N 73°56' W	105.50	S11113.54	E 3075.36
102	103	N 13°26' E	433.21	S10692.00	E 3176.00
103	104	N 89°49' E	136.50	S10691.64	E 3312.50
104	105	Northwesterly	5925.00	S 5596.00	E 1235.00
105	106	S 52°55' W	164.21	S 5695.00	E 1104.00
106	107	S 64°57' W	243.27	S 5591.98	E 883.61
107	108	S 52°04' W	469.48	S 5880.59	E 513.97
108	109	S 74°57' W	228.80	S 5940.00	E 293.00
109	110	Southwesterly	2760.00	S 6980.00	W 2040.00
110	111	Due North	125.00	S 6855.00	W 2040.00
111	112	S 89°23' E	470.03	S 6860.00	W 1570.00
112	113	N 77°32' E	972.81	S 6650.00	W 620.00
113	114	N 47°11' E	921.12	S 6023.96	E 55.83
114	115	N 47°17' E	403.91	S 5760.86	E 361.44
115	116	N 55°26' E	745.31	S 5338.00	E 975.00
116	117	Northwesterly	4385.00	S 1448.50	Zero
117	118	Due South	183.50	S 1632.00	Zero
118	119	S 88°10' W	304.00	S 1641.69	W 303.84
119	120	N 76°14' W	134.26	S 1609.74	W 434.24
120	121	N 14°00' E	188.00	S 1427.33	W 388.76
121	122	Northwesterly	900.00	S 690.00	W 603.00
122	123	N 18°18' E	283.45	S 421.00	W 514.00
123	123A	Northwesterly	1495.00	N 743.00	W 1180.00
123A	123B	Due South	118.00	N 623.00	W 1180.00
123B	123C	S 79°35' W	495.00	N 533.50	W 1666.84
123C	123D	N 24°00' W	122.00	N 644.95	W 1716.46
123D	124	Northwesterly	1795.00	N 1000.00	W 3103.00
124	125	Due West	203.00	N 1000.00	W 3306.00
125	126	N 24°05' E	1374.80	N 2255.00	W 2745.00
126	127	N 55°38' E	303.18	N 2439.00	W 2504.00
127	128	Northwesterly	5425.00	N 6441.33	W 3492.35
128	129	N 80°43' E	130.00	N 6462.30	W 3364.05
129	130	S 9°17' E	20.00	N 6442.56	W 3360.82
130	131	S 80°43' E	178.50	N 6471.36	W 3184.66
131	132	S 1°56' E	105.50	N 6365.93	W 3181.11
132	133	S 5°51' W	187.70	N 6179.18	W 3200.26
133	134	S 17°26' W	147.90	N 6038.06	W 3234.58
134	1	S 62°50' E	65.00	N 6008.38	W 3186.75

\* All Co-ordinate values on this map are referred to the Gary True Meridian.

ARTICLE III

BOUNDARIES OF WARDS; REDISTRICTING

Section 3.100. Boundaries of Wards. The City of Gary shall be divided into four wards, each serving as the basis for electing a councilman to represent the population of his ward. The four wards are hereby designated as follows:

- (a) Ward One shall be composed of all or any portion of Precinct numbers 58, 59 and 61 that lie within the corporate limits of the City of Gary.
- (b) Ward Two shall be composed of all or any portion of Precinct numbers 60 and 65 that lie within the corporate limits of the City of Gary.
- (c) Ward Three shall be composed of all or any portion of Precinct numbers 66, 67 and 68 that lie within the corporate limits of the City of Gary.
- (d) Ward Four shall be composed of all or any portion of Precinct numbers 62, 63 and 64 that lie within the corporate limits of the City of Gary.

The Precincts referred to shall mean the voting Precincts, fixed by the County Court for all State and County elections as they exist on the effective date of this Charter. The boundaries between wards are along existing Precinct boundaries.

Section 3.200. Council Redistricting. It shall be the duty of council to redistrict the city by ordinance, with or without the assistance of a districting commission, within a period of six months after the official publication by the United States of the population of the city as revealed in each official census. Each election district shall be made to contain as nearly as possible, consistent with general laws, the population factor obtained by dividing the number of ward councilmen into city's population as shown by such official census. If, at the expiration of the six months' period, council shall have failed to redistrict the city as herein required, the members of council shall receive no further compensation until such ordinance shall have been adopted. Council may redistrict the city at any more frequent intervals as it may deem appropriate based upon any other such more timely information as may become available.

ARTICLE IV

ELECTIONS

Section 4.100. General Election Laws to Control; Terms of Officers.

Except as otherwise herein provided, the provisions of general law with respect to elections, so far as they may be applicable, shall govern the method of nominating and electing the mayor, recorder and members of council, whose terms of office shall be for a period of two years.

Section 4.200. Voter Qualifications. Every person residing in said city shall be entitled to vote for all officers elected under this act; but no person who is a minor, or of unsound mind, or who is under conviction of treason, or bribery in an election, or who has not been a resident of this state for one year and of said city for six months next preceding the election at which he desires to vote, shall be permitted to vote therein.

Section 4.300. Voter Registration. All qualified voters within the City of Gary entitled to vote in the municipal election held therein shall be registered in like manner as are the qualified voters in state and county elections, and the state laws of the State of West Virginia in effect at the time of such registration shall in all things apply thereto; except the fee for such registration shall be five cents for each qualified voter so registered, and the powers conferred upon the county court by the laws in reference to the registration of voters are hereby conferred upon the council of said City of Gary.

Section 4.400. Primary Elections. Except as otherwise herein provided respecting the first officers to be elected under this charter, primary elections shall be held at the voting places in each of the wards of the city for the purpose of nominating candidates for the ensuing general municipal election and of electing members of political party municipal executive committees, on the first Tuesday after the second Monday in May in the year 1973 and in each second year thereafter.

Any eligible person desiring such nomination for any municipal elective office or election to the office of member of any political party executive committee shall file with the city recorder a certificate declaring himself to be a candidate for the nomination for such office or election as member of a party executive committee, which certificate must be received by the recorder before midnight on the first day of May next preceding the primary election day, or, if mailed, shall be postmarked before that hour, and which certificate shall be in form or effect as follows:

CERTIFICATE OF CANDIDACY

I, \_\_\_\_\_ hereby certify that I am a candidate for (the nomination for) (election to) the office of \_\_\_\_\_ to represent the \_\_\_\_\_ party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that I am a legally qualified voter of the City of Gary, McDowell County, West Virginia; that my residence is \_\_\_\_\_ in said City; that I am eligible to hold the said office;

that I am a member of and affiliated with said political party; and that I am a candidate for said office in good faith.

\_\_\_\_\_  
Candidate

Signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_

19\_\_\_\_.

\_\_\_\_\_  
Notary Public

Section 4.401. First Election and Special Election. The election to elect the first officers of the city, to elect members of political party executive committees and to adopt the city charter shall be held on Tuesday, \_\_\_\_\_ . The term of the first officers and members of the political party executive committees shall begin on July 1, 1971, and shall expire when their successors shall be elected and qualified.

Any eligible person desiring such election shall file, with the Clerk of McDowell County, a certificate declaring himself to be a candidate for such office or election. Certificates of candidacy must be received by the County Clerk before midnight on \_\_\_\_\_ . The certificate of candidacy form is specified in Section 4.400 of this Charter.

Section 4.402. Municipal Party Executive Committees: How Composed.

Each municipal party executive committee shall be composed of one male and one female elected from each ward, whose duties shall be those specified in the laws of West Virginia.

Section 4.403. Terms of Members of Executive Committees. The terms of office of the members of municipal executive committees elected hereunder shall begin upon the issuance of their certificates of election. The terms of all such committee members shall continue until their successors are elected and qualified.

Section 4.500. General Elections. A general election shall be held on the first Tuesday in June, one thousand nine hundred and seventy-three and every two years thereafter, on the first Tuesday in June. There shall be elected, by the qualified voters of said city, a mayor, a recorder, one councilman at large and by the qualified voters of each of the four wards one councilman. The term of office of said mayor, recorder and councilmen shall be for the period of two years, commencing on the first day of July, next after their election, and until their successors shall be elected and qualified.

Section 4.600. Conduct of Elections. In all elections by the people the mode of voting shall be by ballot, including voting by voting machines, but the voters shall be left free to vote an open, sealed or secret ballot, as they may elect. The election in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in

this state relating to general elections, except that the persons conducting said elections shall, on the day after the election is held deliver the ballots, tally sheets and poll books to the recorder, and thereafter the council of said city shall meet within ten days (Sundays excepted) after said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statute of the state relating to elections. The corporate authorities of said city shall perform all duties in relation to such elections required by general law of the county court and officers in effect on the day of said election and each succeeding election under this charter. And the provisions of the code in effect on the date of said election, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders of such corporate elections; and the said act shall have the same force and effect as if it were specially applicable in such corporate elections and was by this act re-enacted in extense; except as above modified as to the time in which the returns of the election and canvass thereto shall be made.

Section 4.700. Tie Vote Procedures. Whenever two or more individuals shall receive an equal number of legal votes for the same office, if such number be the highest cast for such office, the individuals under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly.

Section 4.800. Contested Election Procedures. All contested elections shall be heard and determined by the council in existence at the time the election is held, and the contest shall be made and conducted in the manner as provided for in contests for county and district officers, and the council by their proceedings in such cases shall, as nearly as practicable, conform with like proceedings of the county court in such cases.

Section 4.900. Council to Provide for Independent Party or Group Participation. Council shall by ordinance provide a method for parties or groups which do not meet the requirements of law for classification as a political party to participate in the primary and general municipal elections.

ARTICLE V  
MUNICIPAL AUTHORITIES

Section 5.100. Organization of Council. The municipal authorities of the said City of Gary shall consist of a mayor, recorder and five councilmen, who shall constitute the council of said city and shall be elected by the voters of said city as hereinafter prescribed. One councilman shall be elected by the voters of each of the respective wards, and one councilman shall be elected by the voters at large.

Section 5.200. Qualifications of Councilmen and City Officers.

No person shall be eligible to the office of mayor, recorder or councilman, unless at the time of his election he is legally entitled to vote in the city election for members of the common council; and he is not required to have been assessed with taxes upon real or personal property within the said city.

Section 5.300. Powers of City Council. All the corporate powers and functions pertaining to said city shall be exercised by its council, or under its authority, in the corporate name of said city, unless otherwise provided by state law or municipal ordinance.

Section 5.400. Meetings of Council. The regular meetings of the council shall be publicly held at such times and at such places in the city as they shall from time to time ordain and appoint; and it shall be lawful for the council by ordinance to vest in any officer of the city, or in any member, or

number of members, of its own body, the authority to call special meetings and prescribe the mode in which notice of such special meetings shall be given; if a majority of the members of the council do not attend any regular or special meeting, those in attendance shall have authority to compel the attendance of absent members under such reasonable penalties as they may think proper to impose by ordinance. All questions put to vote, except such matters as hereinafter provided for, shall be decided by a majority of the members present.

Section 5.500. Tie Vote - Council Proceedings. The mayor and recorder shall have votes as members of the council, and in case of a tie, the presiding officer for the time being shall have the deciding vote, but in no case shall the presiding officer vote twice on the same proposition.

Section 5.600. Quorum. The presence of the mayor, or ex officio mayor and three members of said council shall be necessary to constitute a quorum for the transaction of business at all meetings of the council of said city.

Section 5.700. Filling Vacancy - Council Member or City Officer.

Whenever a vacancy from any cause shall occur in any office, the council shall by a majority vote of those present fill such vacancy; and, in case of a vacancy in the office of councilman or mayor, or recorder, the remaining members of the council shall fill said vacancy.

ARTICLE VI  
ELECTED OFFICERS

Section 6.100. Oath of Office for Elected Officers. The mayor, recorder and councilmen, and all other officers provided for in this charter, shall each, before entering upon the duties of their offices, and within fifteen days after receiving their certificates of election or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly faithfully and impartially to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths under the laws in force at the time the same is taken, or before the mayor or recorder of said city; but in any event a copy of said oath of said officer shall be filed with the recorder.

Section 6.200. Term of Office for Elected Officers. The mayor, recorder and councilmen, shall enter upon the duties of their offices upon the first day of July next after their election and continue for the period of two years and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers, both elected and appointed, shall remain in office until their successors are elected or appointed and qualified, or until removed therefrom in the manner prescribed by law.

Section 6.300. Ineligible Elected Officer. If any person elected to any office shall not be eligible thereto, under the provisions of this act, or

shall fail to qualify as herein required, the council shall declare his said office vacant and proceed to fill the vacancy as required by this act.

Section 6.400. Powers and Duties of the Mayor. The mayor of the said city shall be chairman of its council, shall preside at the meeting of the council, shall have all the powers, not herein limited by this charter, accorded to him under the Municipal Code of West Virginia, and shall be a conservator of the peace within the said city. He shall especially see that the orders, by-laws, ordinances, acts and resolutions of the council are faithfully executed. He shall be ex officio justice of the peace within the said city and shall, within the same, have, possess and exercise all the powers and perform all the duties vested by law in a justice of the peace, except he shall have no jurisdiction in civil causes of action. And it shall be his duty especially to see that the peace and good order of the city are preserved, and that persons and property therein are protected. He shall have power to issue his warrant for the arrest and apprehension of all persons violating the ordinances of the city, and shall have power to try the same and impose upon such violators of the ordinances of said city such fines and penalties as are prescribed by the ordinances thereof. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of said county, or other place of imprisonment used by such corporation, if there be one, until the fine or penalty and the costs be paid.

Section 6.500. Compensation of the Mayor. The council shall fix the mayor's salary, a sum not to exceed six hundred dollars per year, to be paid out of the city treasury in monthly installments.

Section 6.600. Duties of the Recorder. The recorder shall keep an accurate record of all the proceedings of the council, and shall have charge of and preserve the records of the city. In case of the absence of the mayor from the city, or his inability from any cause to act, or during any vacancy in the office of mayor, the recorder shall perform such duties of the mayor as pertain to the office of mayor, and to that end, in addition to the other powers herein conferred upon him, the recorder is hereby vested with all the powers necessary for the performance of the duties of the mayor, while acting as such, including the authority of the mayor, pertaining to civil suits.

Section 6.700. Compensation of the Recorder. The recorder shall be paid a salary fixed by the council, not to exceed six hundred dollars per year, payable in equal monthly installments, for his services as such recorder, to be paid out of the city treasury.

Section 6.800. Removal of Elected Officers. Any member of the council and any elected city official may be removed from his office in accordance with the provisions for recall of an elected official specified in the Municipal Code of West Virginia.

ARTICLE VII

APPOINTIVE OFFICERS - DUTIES OF OFFICERS

Section 7.100. Power of Council to Make Appointments. The council shall also have authority to provide by ordinance for the appointment of such other officers as shall be necessary and proper, to carry into full force and authority the power, capacity, jurisdiction and duties of said city, which are or shall be vested therein or in the council, or in the mayor, or any other officer or body of officers, thereof, and to grant to the officers so appointed the power necessary or proper for the purpose above mentioned. The council, by ordinance, shall define the duties of all officers so appointed, and may provide them a reasonable salary, which shall be payable out of the city treasury which salary shall not be increased or diminished during their term of office, and shall require and take from all of them whose duty it shall be to receive its funds, assets or property, or have charge of the same, such bonds, obligations, or other writing as they shall deem necessary or proper to insure the faithful performance of their several duties.

Section 7.200. Removal of Appointed Officers. Any appointed officer who holds his office at the pleasure of the council, may be removed from his office for cause, after due notice.

Section 7.300. Chief of Police. The chief of police and any other police officer appointed by said council, shall have all power, rights and privileges within the corporate limits of said city in regard to the arrest of persons, the collection of claims and the execution and return of process that

can be legally exercised by a constable of a district within this state; and may without having any warrant or other process therefor, arrest any person who commits any offense against the laws of this state or infraction of the ordinances of said city, in his presence. The chief of police shall be ex officio the keeper of the city jail, and have charge of the city prisoners confined therein, and may confine any person arrested by him in the city jail until such time as the charge against such person can be inquired into by the mayor. Any person confined by the mayor, for infraction of any of the ordinances of the city, may pay such fine to either the mayor, the recorder or the chief of police; and the said chief of police and his sureties shall be liable for all fines, penalties and forfeitures that a constable of a district is liable for in the same court that the said fine, penalties and forfeitures are now recovered against a district constable. The chief of police shall also be ex officio tax collector of the said city. For his services as chief of police and tax collector, the said chief of police shall receive such sum per month as the council may fix, payable out of the city treasury. The chief of police shall be appointed to his office by the council. It shall be his duty as tax collector to collect the city taxes, licenses, levies, assessments, and other such city claims as are placed in his hands for collection by the council, and he may distrain and sell therefor in like manner as a sheriff may distrain and sell for state taxes; and he shall, in all other respects, have the same powers, as a sheriff to enforce the payment and collection thereof.

Section 7.400. City Attorney. The city attorney shall be the legal adviser of the city and all of its officers in all matters arising, and in which legal proceedings may be taken; he shall prosecute all suits, actions and proceedings instituted on behalf of said city, and defend all suits and actions against said city, and when requested in writing shall give his written opinion to the mayor or council or any standing committee thereto upon such legal questions as may be referred to him affecting the city's interest; he shall perform such other duties as may be required. It shall be his duty to attend the sessions of the council when requested and prosecute all trials before said mayor and all appeals that are taken from such mayor to the criminal or circuit court and for his services he shall receive such compensation as the council shall provide, and in addition thereto in all criminal prosecutions conducted by said city attorney, where there is a conviction by said city attorneys, where there is a conviction of the defendant, there shall be taxed an attorney's fee in favor of said city attorney, not less than five nor more than ten dollars, which said fee shall be taxed as a part of the costs of the case.

Section 7.500. City Treasurer. The council of the City of Gary shall appoint a city treasurer, prescribe his duties and provide compensation, payable in equal monthly installments.

Section 7.600. City Health Commissioner and City Board of Health. The council shall appoint a suitable person, who shall be a practicing physician, as health commissioner, whose term of office shall be one year and until his successor is appointed and qualified. The mayor, health commissioner and city attorney are hereby constituted and shall be a city board of health. The board

of health shall do and perform all such duties and exercise such powers as may be required of or conferred upon it by legal ordinances of said city. The board of health shall have the power to summon witnesses, hear testimony and to do any and all other things necessary and proper in the performance of its duties under this act and under the general laws of the state in such case made and provided.

ARTICLE VIII

RECORD BOOKS

Section 8.100. Minute Book - City Council. The council shall cause to be kept by the recorder, in a well-bound book to be called the "minute book", an accurate record of all its proceedings, ordinances, acts, orders and resolutions. The "minute book" shall be accurately indexed and open to the inspection of anyone required to pay taxes in the city, or who may be otherwise interested therein. At each meeting of the council the proceedings of the last meeting shall be read and corrected, if erroneous, and signed by the presiding officer for the time being. Upon the call of any member the ayes and noes on any question shall be taken and recorded by the recorder in the "minute book". The call of the members for such vote shall be made alphabetically.

Section 8.200. Ordinance Book. The council shall cause to be kept by the recorder, in a well-bound book to be called the "Ordinance Book", accurate copies of all general ordinances adopted by the council. The "Ordinance Book" shall be accurately indexed and open to the inspection of anyone required to pay taxes in the city, or who may be otherwise interested therein.

Section 8.300. Record of Bonds. All oaths and bonds of officers in the city, and all papers of the council shall be endorsed, filed and securely kept by the recorder. The bonds of officers shall be recorded in a well-bound book to be called "Record of Bonds". The recorder shall perform such other duties as by ordinance of the council may be prescribed. The transcript of

ordinances, acts, orders and resolutions certified by the recorder under the seal of the city shall be admissible in evidence in any court, or before any justice.

# Section 8.400. Police Docket. A well-bound book, indexed, to be denominated the "Police Docket", shall be kept in the office of the mayor, in which shall be noted each case brought before or tried by him, together with the proceedings therein, including a statement of the complaint, the warrant or summons, the return, the fact of appearance, or non-appearance, the defense, the hearing the judgment, the costs, and in case the judgment be one of conviction the action taken to enforce the same. The record of each case shall be signed by the mayor, and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office.

ARTICLE IX

FINANCES

Section 9.100. Payment of City Funds. All moneys belonging to the city shall be paid over to the city treasurer; and no money shall be paid out by him except as the same shall have been appropriated by the council, and upon an order signed by the mayor and recorder, and not otherwise, except at the expiration of his term of office upon the order of the council, signed by the mayor and recorder, he shall pay over to his successor all the money remaining in his hands.

Section 9.200. Taxation. The council shall be governed in all respects in laying the annual levy or any additional or special levy by the constitution and general laws of the State of West Virginia.

Section 9.300. Assessment and Collection of Taxes. It shall be the duty of the treasurer of the municipality to collect and promptly pay into the municipal treasury all taxes, fines, special assessments and other moneys due the municipality in the manner provided in the general laws of the State of West Virginia.

Section 9.400. Bond Issues. The council of the said city shall have the right to bond the said city for the purpose of paving the said streets, or for other permanent improvements, or for the purpose of taking up, paying off or refunding any already outstanding city bonds or items of indebtedness,

whenever the council thereof may deem the same necessary, but the aggregate indebtedness of the said city for all purposes shall never at any time exceed five per centum of the assessed valuation of the taxable property therein according to the last assessment next preceding said date or as otherwise limited by law. The said council shall provide a fund for the payment of the interest annually on the said indebtedness so created, and to pay the principal thereof within and not exceeding thirty-four years; provided, that no debt shall be contracted hereunder, unless all questions connected with the same be first submitted to a vote of the qualified voters of said city, and have received three-fifths of all the votes cast for and against the same.

Section 9.500. Official Bonds. All bonds, obligations or other writings taken in pursuance of any provision of this act or under the provisions of and order of said city, shall be made payable to "The City of Gary," and the obligors therein and their heirs, executors, administrators and assigns bound thereby shall be subject to the same proceedings of such bonds, obligations or writings for enforcing the conditions of the terms thereof, by motion or otherwise, before any court of record or justice of the peace having jurisdiction thereof, held or acting in or for said McDowell County, or any district thereof or elsewhere, that the sheriff or collector of said county and his sureties are or shall be subject to on his bond taken for the enforcement of the duties in the payment of the county levy.

Section 9.600. Indebtedness Prohibited. The council of the said city shall not, at any time, or for any purpose, create any indebtedness against the said city except as provided in the next preceding section, exceeding the available assets of the said city for the current year; and if the said council shall create such indebtedness or issue orders on the city for an amount exceeding the amount of money collected for that year for said city from all sources, and the amount of money then in the treasury appropriated, the members of said council shall be severally and jointly liable for the payment of the excess of such indebtedness or orders over the amount of money applicable thereto, and the same may be recovered in any court having jurisdiction thereof. Any councilman violating the provisions of this section shall be deemed guilty of malfeasance in office, and may be removed as such councilman in pursuance of Section 6.800 of this act. Provided, however, this shall not be applicable to such members who have voted against said excess; and, provided, further, that the vote of each member of council shall be recorded.

ARTICLE X

ORDINANCES; LICENSES; CONDEMNATION

Section 10.100. Ordinances. All ordinances, by-laws, resolutions and rules of the City of Gary hereinafter enacted shall be and remain in full force over the whole boundary of said City of Gary until the same are amended or repealed by the council of said city, and the officers elected on the first \_\_\_\_\_, one thousand nine hundred and seventy, in the City of Gary shall remain in office until their successors under this charter are elected and qualified as hereinbefore provided; and after this charter takes effect, shall have jurisdiction over all the territory embraced in the boundary specified in this charter, and shall perform all the duties of such respective officers under this charter.

Section 10.200. Licenses Prescribed by Ordinance. The council shall prescribe by ordinance the time and manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to the city recorder before the delivery thereof to the person applying therefor, which tax shall include the same fees for the issuing of such licenses as are charged for similar services by state and county officers, which fees shall be paid into the city treasury. The council may revoke any such license for a breach of any of the conditions, or for other good cause shown, but the person holding such license, must first have reasonable notice of the time and place of hearing and adjudicating the matter, as well as the cause alleged; and shall be entitled to be heard in person or by council, in opposition to such revocation.

The term for which licenses provided for in this charter be granted shall be governed by the general law providing for state license.

Section 10.300. Condemnation Proceedings. The council shall have the right to institute and prosecute proceedings in the name of the city for condemnation of real estate for streets, alleys, roads, drains, sewers, market grounds, city prison, city hall, water works, electric light plant or other works, or purposes of public utility. Such proceedings shall conform to the provisions of chapters eight and fifty-four of the official code of West Virginia of one thousand nine hundred thirty-one, as amended, and the expenses thereof shall be borne by the city, except in cases where it is proper under said chapter to charge said expenses or any part thereof against the defendant.

ARTICLE XI

FRANCHISES

Section 11.100. Franchises Granted by Council. Franchises shall be granted by the council, allowing to persons or corporations, for a limited time such occupancy of portions of the street as may be necessary for works of public utility and service.

Section 11.200. Proposals Made Public. No ordinance, granting any franchise for the use of the streets, alleys or public grounds for the town for any of the purposes of public utility, or for any other purpose of the like nature, shall be passed unless it shall have been first filed with the recorder, and notice of the object, nature and extent of the franchise shall have been published at least thirty days by the applicant, in some newspaper of general circulation in McDowell County, West Virginia, before being acted upon, and shall have received a vote of the majority of the members of the council at a regular meeting after said publication. The votes thereon shall be taken by ayes and noes, and the same entered upon the journal.

Section 11.300. Time Limit - Franchises. Every grant of any such franchise shall be for a limited period of time. If no limit be expressly provided in the grant, the franchise shall be valid for one year only. In no case shall the franchise extend for a period exceeding fifty years.

Section 11.400. City to be Indemnified Against Damages. No grant of any such franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the city against all damages caused by the construction of such work. All reasonable additional provisions and conditions may be made for the protection of the public from unnecessary damage or inconvenience by reason of such works and the operation thereof.

Section 11.500. Franchise - Extensions. No grant of a franchise or the extension of, or an addition to, any line of such work, over any additional street or territory of the city, shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension; and if the franchise of the principal company or work is one which was granted before this charter goes into effect, and is not limited as to time, the franchise granted for the extension or addition shall nevertheless be made subject to the conditions thereof, including a time limit of not exceeding fifty years. If a franchise be secured from the city by an individual or by an independent or new company, and the work constructed thereunder afterward becomes a part of it, or be operated as a part of a larger work of the same kind whose franchise was previously obtained and is limited to expire earlier, such later franchise shall, by reason of such annexation, merger, or single operation, expire simultaneously with such earlier franchise.

ARTICLE XII  
ROADS AND STREETS

Section 12.100. Maintain Roads and Streets. The said city shall construct, conduct and maintain its own roads and streets.

On March 16, 1970, the voters within the proposed incorporated area of the City of Gary voted to incorporate. At that time seven members were elected to the Charter Board of the proposed Class III City. On March 23, 1970, the County Court of McDowell County canvassed the vote and certified the results. In accordance with Code 8-3-2, the Charter Board met and organized on the 31st day of March, 1970.

The Charter for the City of Gary, McDowell County, West Virginia was drafted and approved by the following members of the Charter Board as of June 15, 1970:

Wade T. Watson  
Wade T. Watson, Chairman

John R. Drosick, Jr.  
John R. Drosick, Jr.

Adrian H. Haynes  
Adrian H. Haynes

Robert T. Long  
Robert T. Long

John A. Popovich  
John A. Popovich

Robert Purcell, Jr.  
Robert Purcell, Jr.

James L. Gallimore  
James L. Gallimore, Secretary

James Gallimore, Secretary  
The Charter Board  
The City of Gary  
Gary, West Virginia 24836  
August 6, 1970

Honorable Chauncey H. Browning, Jr.  
Attorney General of the State of West Virginia  
State Capitol Building  
Charleston, West Virginia 25305

Attention: Ms. Cheryl Ann Wheeler

Dear Mr. Browning:

I am certifying to you a revised draft of the Charter for the proposed City of Gary, West Virginia.

The Charter Board met on August 4, 1970 and agreed to the recommendations and exceptions as stated in your letter of July 28, 1970. The Charter has been revised and is herewith submitted for your certification.

Very truly yours,



James Gallimore, Secretary

JG:hr

AN ORDINANCE RELATING TO CONFLICT OF INTEREST  
OF MEMBERS OF THE GOVERNING BODY OF THE CITY OF GARY

Whereas, under the provisions of West Virginia Code 8-5-19, as amended, wherein it is provided that every city have plenary power and authority to provide by ordinance for situations which could place members of the governing body in a conflict of interest, and

Whereas, the governing body of the City of Gary, namely the City Council of said City, is of the opinion that such an ordinance should be enacted in the City of Gary inasmuch as the present city council, being the first in the history of the City of Gary, would like to set the tone of government to be followed by succeeding governing bodies of said city,

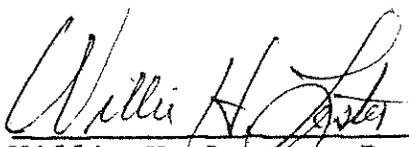
Now, therefore, be it ordained and enacted by the City Council of the City of Gary, County of McDowell, State of West Virginia that:

Section 1. No member of the governing body, or any officer or officers of the City of Gary shall be interested personally, either directly or indirectly, as a member, manager, officer or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the City of Gary, or to any contractor, or workmen for the City of Gary, or in any manner whatsoever, whereby the taxpayers of such municipality shall become the paymaster, or the residents of said city shall have to pay, directly or indirectly, to the City of Gary for material, services or supplies.

Section 2. Any person who violates the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, such member or officer shall be fined not less than fifty nor more than five hundred dollars, and shall automatically be removed from office.

This ordinance enacted and effective from this the 12<sup>th</sup> day of June, 1973.

  
\_\_\_\_\_  
W. S. McConnell, Mayor

  
\_\_\_\_\_  
Willie H. Lester, Recorder

filed in  
city ordinance  
2-10-99

**AN ORDINANCE TO INCREASE THE TERM OF OFFICE OF THE ELECTED OFFICERS OF THE CITY OF GARY, GARY, WEST VIRGINIA**

The governing body of The City of Gary, Gary, West Virginia deemed it expedient to amend Article IV, Section 4.400, Primary Elections; Section 4.500 General Elections; and, Article VI, Section 6.200, Term of Office for Elected Officers, of the Charter of The City of Gary, by ordinance, to increase the term of office for the officers of the City of Gary to four years beginning as of July 1, 1999, and no objection, in writing, having been filed, it is; therefore, **ENACTED**, the following sections are amended to read as follows:

Article IV. Elections.

Section 4.400 Primary Elections. Except as otherwise herein provided respecting the first officers to be elected under this charter, primary elections shall be held at the voting places in each of the wards of the city for the purpose of nominating candidates for the ensuing general election and of electing members of political party municipal executive committees, on the first Tuesday in April in the year 1993 and in each fourth year thereafter, beginning July 1, 1999.

Section 4.500 General Elections. ... The term of office of said mayor, recorder and councilmen shall be for the period of four years, commencing on the first day of July, next after their election, and until their successors shall be elected and qualified.

Article VI. Elected Officers.

Section 6 200. Term of Office for Elected Officers. The mayor, recorder and councilmen, shall enter upon the duties of their offices upon the first day of July next after their election and continue for the period of four years and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers, both elected and appointed, shall remain in office until their successors are elected or appointed and qualified, or until removed therefrom in the manner prescribed by law.

Pursuant to Chapter 8, Article 4, Section 8, of the West Virginia Code of 1931, as amended, the proposed amendments were considered by the governing body of the City of Gary, Gary, West Virginia, at its regular meeting held at 6:00 p. m. at the Gary City Hall on

February 9, 1999, at which time and place no qualified voter or any freeholder of the city appeared and filed objections, in writing, and no objections were filed, in writing, the said amendments shall become operative on and after July 1, 1999. No objections having been filed, the governing body does, by this ordinance, adopt the amendments as amendments to the charter of the City of Gary, Gary West Virginia, and said amendments shall become operative on and after July 1, 1999.

Done this 9th day of February, 1999.



Henry Paul, Mayor

Attest:



Lawrence A. Barber, III  
Recorder

OATH OF OFFICE

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

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of MAYOR

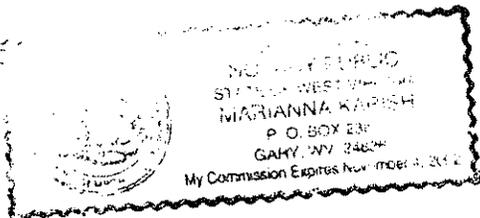
City of Gary  
McDowell County, West Virginia, to the best of my skill and judgement:

SO HELP ME GOD.

Henry Paul

Subscribed and sworn to me, the undersigned authority, this 22  
day of June, 1989.

Marianna Kapish  
Notary Public



OATH OF OFFICE

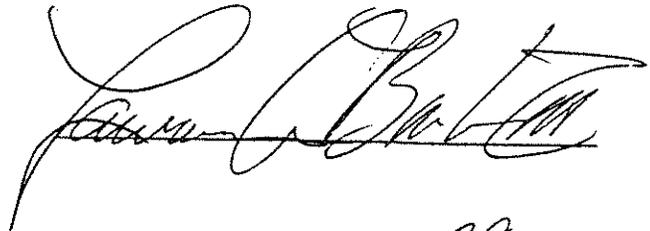
STATE OF WEST VIRGINIA, COUNTY OF McDOWELL, TO-WIT:

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_

Recorder City of Gary

McDowell County, West Virginia, to the best of my skill and judgement:

SO HELP ME GOD.



Subscribed and sworn to me, the undersigned authority, this 29  
day of June, 1999.



Marianna Kapish  
Notary Public

OATH OF OFFICE

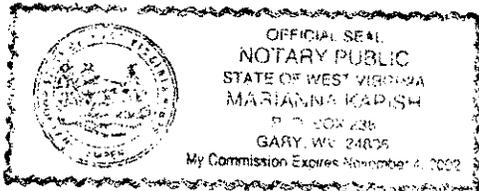
STATE OF WEST VIRGINIA, COUNTY OF McDOWELL, TO-WIT:

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman-At-Large ~~of the~~ City of Gary McDowell County, West Virginia, to the best of my skill and judgement:  
SO HELP ME GOD.

William Smith

Subscribed and sworn to me, the undersigned authority, this 22 day of JUNE, 1999.

Marianna Kapish  
Notary Public



OATH OF OFFICE

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

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council

WARD I City of Gary

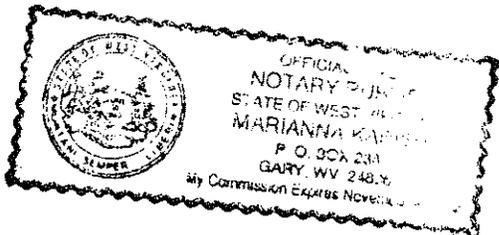
McDowell County, West Virginia, to the best of my skill and judgement:

SO HELP ME GOD.

Edward J. Wall

Subscribed and sworn to me, the undersigned authority, this 22  
day of June, 1999.

Marianna Kapski  
Notary Public



OATH OF OFFICE

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

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of

Council WARD II City of Gary

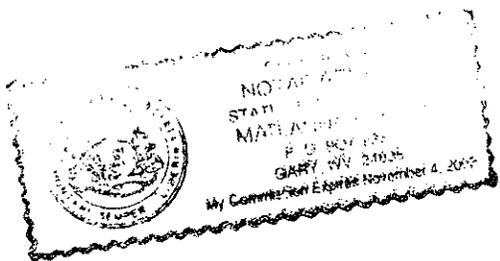
McDowell County, West Virginia, to the best of my skill and judgement:

SO HELP ME GOD.

Leodis P. Clloyd

Subscribed and sworn to me, the undersigned authority, this 24  
day of June, 1999.

Marianna Kapish  
(Notary Public)



OATH OF OFFICE

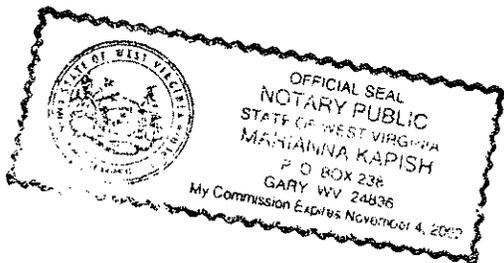
STATE OF WEST VIRGINIA, COUNTY OF McDOWELL, TO-WIT:

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council  
WARD III City of Gary  
McDowell County, West Virginia, to the best of my skill and judgement:  
SO HELP ME GOD.

Robert J. Orr

Subscribed and sworn to me, the undersigned authority, this 22  
day of JUNE, 1999.

Marianna Kapish  
Notary Public



OATH OF OFFICE

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

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council

WARD IV

McDowell County, West Virginia, to the best of my skill and judgement:

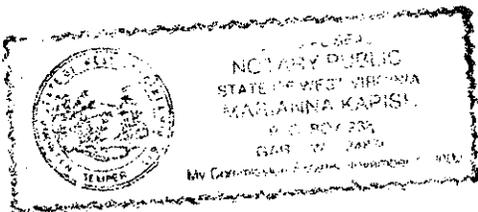
SO HELP ME GOD.

James R David

Subscribed and sworn to me, the undersigned authority, this 6

day of July, 1999.

Marianna Kapish  
Notary Public





RULES OF PROCEDURE  
OF THE CITY OF GARY

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

Be it Resolved and Ordered by the Council of the City of Gary, McDowell County, West Virginia:

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

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

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

(B) The Council of the City of Gary (the "Council"), McDowell County, West Virginia (the "City"), is the governing body of the City within the meaning of the Act.

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

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

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, post, and leave posted throughout the year to which it applies, at the regular meeting place of the Council, where notices customarily are posted, a notice setting forth the date, time and place of the Council's regularly scheduled meetings for the ensuing year. In addition, a copy of the agenda for each regularly scheduled meeting shall also be posted at the same location by the Recorder not less than 48 hours before such regular meeting is to be held.

The Council shall also instruct the Recorder to, and the Recorder shall, distribute to each of the newspapers and other news media listed below a notice identical to that posted:

<u>News Media</u>	<u>Address</u>
Welch Daily News	P.O. Box 569 Welch, WV 24801

A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In July of each year after the adoption of this Resolution, the Council shall review the above list and shall amend such list as needed, in the opinion of the Council, to reflect properly all the newspapers and other news media that customarily cover news of the area served by the Council. In addition, a copy of the agenda for each regularly scheduled meeting shall also be distributed to the news media by the Recorder not less than 48 hours before such regular meeting is to be held.

In the event of any modification to the date, time, place or agenda of a regularly scheduled meeting of the Council, notice of such modification shall immediately be given to the public and news media by posting at the place and distributing to the news media in the manner set forth above. A copy of the notice of such modification shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 2. Notice of Special Meetings. Not less than 48 hours prior to the date set for any special meeting of the Council, the Council shall instruct the Recorder to, and the Recorder shall, post at the regular meeting place of the Council, where notices customarily are posted, a notice setting forth the date, time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than 48 hours prior to the date set for such special meeting, the Recorder shall distribute to each of the newspapers and other news media listed in Rule No. 1 hereof, a notice identical to that posted. Amendments made to such news media list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

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

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

Rule No. 4. Executive Sessions. The Council may hold an executive session during a regular, special or emergency meeting in accordance with Section 4 of the Act. During the open portion of the meeting, prior to convening an executive session, the Mayor shall identify the authorization under Section 4 of the Act for holding the executive session and present it to the Council and to the general public, but no decision may be made in the executive session. An executive session may be held only upon a majority affirmative vote of the Council members present. The Council may hold an executive session and exclude the public only when a closed session is required for any of the actions permitted under Section 4 of the Act.

Rule No. 5. Minutes. The Council shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in Section 4 of the Act, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

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

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

Rule No. 7. Broadcasting of Meetings. Except as otherwise provided in this rule, any radio or television station is entitled to broadcast all or any part of a Council meeting required to be open. The Council may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The Council shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference; provided, that if the Council, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the Council, acting in good faith and consistent with the purposes of this rule, may require the pooling of the equipment and the personnel operating it.

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

Section 4. Committee Meetings. All meetings of any committee of the Council shall be subject to the Rules of Procedure set forth in Section 3 hereof.

Section 5. Conflicting Provisions Repealed. All resolutions, orders and rules, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflicts, hereby repealed.

Section 6. Effective Time. This Resolution and the Rules of Procedure promulgated hereby shall take effect immediately upon the adoption hereof.

Adopted this 17<sup>th</sup> day of April, 2000.

*Henry Paul*  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Council of the City of Gary on the 17<sup>th</sup> day of April, 2000.

Dated this 1<sup>st</sup> day of August, 2000.

[SEAL]

  
Recorder

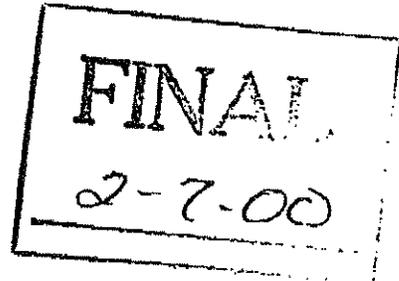
06/30/00  
009056/00301



991308alj011800.wpd

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: January 18, 2000



CASE NO. 99-1308-W-CN

CITY OF GARY WATER DEPARTMENT,  
a municipal utility.

Application for a certificate of convenience and necessity to construct improvements to the City's water supply by rebuilding two (2) filters, adding chemical feed systems, constructing new tray aerators, installing two high service pumps and installing two backwash pumps and related improvements; to make improvements to the storage system by rehabilitating two 300,000 gallon tanks and one 1000,000 gallon tank; to construct three booster stations and one raw water pump station; and to make improvements to the distribution system consisting of approximately 29,000 feet of 12-inch pipe; 10,700 feet of 8-inch pipe; 11,600 feet of 6-inch pipe; 1,200 ft. of 2-inch pipe and related appurtenances.

RECOMMENDED DECISION

On September 3, 1999, the City of Gary Water Department (City or Applicant), a municipal corporation, filed an application for a certificate of convenience and necessity to construct improvements to its water treatment plant, water storage system and water distribution system. The City estimates that construction of the project will cost approximately \$3,786,911.

The Applicant proposes to finance the construction of the project with a Small Cities Block Grant in the amount of \$1,130,911; a loan in the amount of \$1,656,000 from the State Drinking Water Treatment Revolving Fund for a term of thirty (30) years at an annual fee of 1% and an annual 15% reserve requirement; and a grant in the amount of \$1,000,000 from the Appalachian Regional Commission.

On September 7, 1999, the City of Gary Water Department was required to provide public notice of this application by publishing a copy of the Commission's Order, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in McDowell County. If no public protests are timely filed in response to the published notice, the Commission is authorized to render a decision without a hearing, by virtue of the provisions of West Virginia Code §24-2-11.

On October 13, 1999, the City of Gary Water Department filed an Affidavit of Publication indicating that the Notice of Filing was published on September 14, 1999, in The Welch Daily News, a newspaper published and of general circulation in McDowell County. The thirty (30) day protest period expired on October 14, 1999, with no protests having been filed either as of that date or as of the date of this Order.

By Order entered on October 18, 1999, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before March 31, 2000.

On December 22, 1999, Meyishi Blair, Staff Attorney, filed a Final Joint Staff Memorandum in this proceeding, stating that, on December 21, 1999, the Commission received documentation regarding the City's ordinance adoption that had been requested on November 25, 1999, and that, once this information is reviewed, Staff would be making a further recommendation.

On January 6, 2000, Staff Attorney Meyishi Blair filed a Further Joint Staff Memorandum prepared by Jim Spurlock, Technical Analyst, Engineering Division, and James W. Boggess, Utilities Analyst II, Water and Wastewater Division. According to Staff, the project is necessitated primarily by deteriorated facilities. The City loses up to 90% of treated water, and experiences water quality problems. According to Staff, no new customers will be added as part of the project; however, a future Phase II project would extend water from Gary to Black Wolf, Pageton and Skygusty. According to Staff, the City estimates a savings in power of \$32,000 per year from this project. However, decreased chlorine costs from reduced water loss will be offset by new costs for potassium permanganate and polymer. Staff noted that the proposed project has been approved by the Division of Environmental Health Services via Permit No. 14,197.

According to Staff, letters are on file evidencing 100% financing of the estimated project cost of \$3,786,911, as follows: Small Cities Block Grant (SCBG), \$1,130,911; State Drinking Water Treatment Revolving Fund (DWTRF) Loan, \$1,656,000; and an Appalachian Regional Commission (ARC) Grant of \$1,000,000, totaling \$3,786,911.

Staff noted that the terms of the DWTRF loan are thirty (30) years at an annual fee of 1% with a debt reserve of 15%. The loan must be closed on or before April 15, 2000. The annual debt service consists of an annual principal and interest payment of \$63,962 and a reserve of \$9,594 for a total annual DWTRF loan debt requirement of \$73,678.

The City of Gary adopted a Water Ordinance increasing rates 25.6% to provide revenues primarily for the debt service on the DWTRF loan. According to Staff, the cash flow analysis shows the rate increase to be adequate. A debt coverage of 130.3% is anticipated with the new rates, along with a cash surplus of \$9,795.

Staff noted that the City's current and proposed tariff requires a \$50.00 security deposit. The Legal Division pointed out, in a letter dated November 24, 1999, that the deposit amount is in violation of the State Code and the Commission's Water Rule 4.2.1.b., which allows a deposit for residential service in the amount equal to one-twelfth of the estimated annual consumption. Based on average consumption of 4,500 gallons, the City's water security deposit at pro forma rates should be no more than \$25.00, rounded to the nearest dollar.

Staff noted that, from a financial standpoint, the City's project is feasible.

Staff recommended the following: that the project be approved; that the funding package be approved; and that, if there are any changes to the cost, scope or financing of the project, the City obtain Commission approval of those changes.

On January 13, 2000, by facsimile transmission, and on January 18, 2000, by hard copy, Counsel for the City filed an objection to the Staff recommendation, specifically, the recommendation that the City obtain Commission approval if the cost, scope or financing for the project change. Counsel argued that this condition was unreasonable and would require the City to obtain additional approval if the cost of the project changed by \$0.10.

Upon consideration of all of the above, the Administrative Law Judge is of the opinion that the application should be approved, along with the proposed financing. The condition recommended by Staff Attorney Blair, that the City obtain Commission approval if the cost, scope or financing of the project change, will be adopted. The language is a standard Commission condition in all certificate cases, and is necessary to enable the Commission to adequately oversee projects constructed by utilities subject to its jurisdiction and to ensure that a utility does not proceed with a project which may no longer be economically feasible due to higher bids or other external forces.

#### FINDINGS OF FACT

1. On September 3, 1999, the City of Gary filed an application for a certificate of convenience and necessity to construct improvements to their water treatment plant, water storage system and water distribution system. (See, Application filed September 3, 1999).

2. By Order entered on September 7, 1999, the City of Gary was required to provide public notice of this application. (See, Order entered September 7, 1999).

3. On October 13, 1999, the City of Gary filed an affidavit of publication in this proceeding indicating that the required notice was published on the 14<sup>th</sup> day of September 1999. (See, Affidavit of Publication filed October 13, 1999).

4. The thirty (30) day protest period expired on October 14, 1999, with no protests having been filed. (See, Affidavit of Publication filed October 13, 1999; case file generally).

5. The proposed project has been approved by the Division of Environmental Health Services via Permit No. 14,197. (See, filing of September 14, 1999).

6. The total project cost is estimated to be \$3,786,911, and will be financed with a Small Cities Block Grant in the amount of \$1,130,911; a loan in the amount of \$1,656,000 from the State Drinking Water Treatment Revolving Fund for a term of thirty (30) years at an annual fee of 1% and an annual 15% reserve requirement; and a grant in the amount of \$1,000,000 from the Appalachian Regional Commission. (See, Further Joint Staff Memorandum filed January 6, 2000).

7. The project is necessitated primarily by deteriorated facilities. The City loses up to 90% of treated water, and experiences water quality problems. (See, Further Joint Staff Memorandum filed January 6, 2000).

8. Staff is of the opinion that the project is in the public interest and adequately funded and should be approved. (See, Further Joint Staff Memorandum filed January 6, 2000).

#### CONCLUSION OF LAW

1. The public convenience and necessity require the proposed project.

2. The proposed project will provide adequate service.

3. The proposed project is adequately financed and is economically feasible.

4. Good cause has been shown to waive a formal hearing on this matter, pursuant to West Virginia Code §24-2-11, since no protests have been received to the project.

5. The issuance of a certificate of convenience and necessity shall be valid for the project as proposed. Any substantial changes in the scope of this project and/or funding after the granting of the certificate will require further approval from the Public Service Commission.

ORDER

IT IS, THEREFORE, ORDERED that a certificate of convenience and necessity, be, and it hereby is, granted to the City of Gary Water Department to construct improvements to the City's water system as stated in the application filed on September 3, 1999.

IT IS FURTHER ORDERED that the proposed funding of this project, consisting of a Small Cities Block Grant in the amount of \$1,130,911; a loan in the amount of \$1,656,000, from the State Drinking Water Treatment Revolving Fund for a term of thirty (30) years, at an annual fee of 1%, and an annual 15% reserve requirement; and a grant of \$1,000,000 from the Appalachian Regional Commission be, and it hereby is, approved.

IT IS FURTHER ORDERED that the formal hearing in this matter be waived, pursuant to West Virginia Code §24-2-11, for the reasons that no protest were received after publication and there remain no outstanding issues to be litigated.

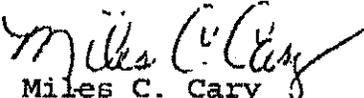
IT IS FURTHER ORDERED that, if there are any changes to the scope, financing or cost of the project certificated herein, the City of Gary shall obtain Commission approval of those changes prior to construction.

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.

  
Miles C. Cary  
Administrative Law Judge

MCC:jas:mal  
991308a.wpd

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 25th day of July, 2000.

CASE NO. 99-1308-W-CN

CITY OF GARY WATER DEPARTMENT,  
a municipal utility. (Reopened.)

Application for a certificate of convenience and necessity to construct improvements to the City's water treatment plant, water storage tank and water distribution system.

**COMMISSION ORDER**

On June 27, 2000, the City of Gary Water Department (City) filed a petition to reopen the above-captioned proceeding in order to obtain the Commission's approval of the City's increased project costs and additional financing to cover such increased costs.

By Recommended Decision entered January 18, 2000, (Final Order, February 7, 2000), the Commission granted the City's application for a certificate of public convenience and necessity to construct certain improvements to the City's water system and approved financing for said project.

In its June 27, 2000, petition, the City noted that it received a low bid of \$4,036,911; \$250,000 over the projected project cost. In order to fund the financing shortfall, the City obtained an additional Small Cities Block Grant in the amount of \$119,089 and an increase in its loan from the Drinking Water Treatment Revolving Fund in the amount of \$130,911. The administrative fee on the City's total loan was reduced from 1% to .5%. The City averred that this change in the loan amount and terms would increase annual debt service payments by approximately \$143.

On July 18, 2000, Commission Staff (Staff) filed a Final Joint Staff Memorandum describing the change in funding. Additionally, Staff noted that neither the scope of the project nor the rates enacted by ordinance would change due to the funding revision. Staff recommended that the City's certificate of convenience and necessity for the previously approved water project be amended to reflect the revised financing. Staff further noted that the closing date for the funding was July 27, 2000.

UPON CONSIDERATION WHEREOF, the Commission concludes that it is reasonable to reopen this proceeding and to approve the City's increased project construction costs, as well as to approve the City's additional funding to construct the certificated project.

IT IS, THEREFORE, ORDERED that the City of Gary's June 27, 2000, petition to reopen the above-captioned proceeding for approval of increased project construction costs and additional funding for the certificated project should be, and hereby is, granted.

IT IS FURTHER ORDERED that City's revised total project cost of \$4,036,911 is approved.

IT IS FURTHER ORDERED that the City's receipt of an additional Small Cities Block Grant in the amount of \$119,089 is approved.

IT IS FURTHER ORDERED that the City's receipt of an increase in its loan from the Drinking Water Treatment Revolving Fund in the amount of \$130,911 is approved.

IT IS FURTHER ORDERED that the reduction in the City's administrative fee for the Drinking Water Treatment Revolving Fund loan from 1% to .5% is approved.

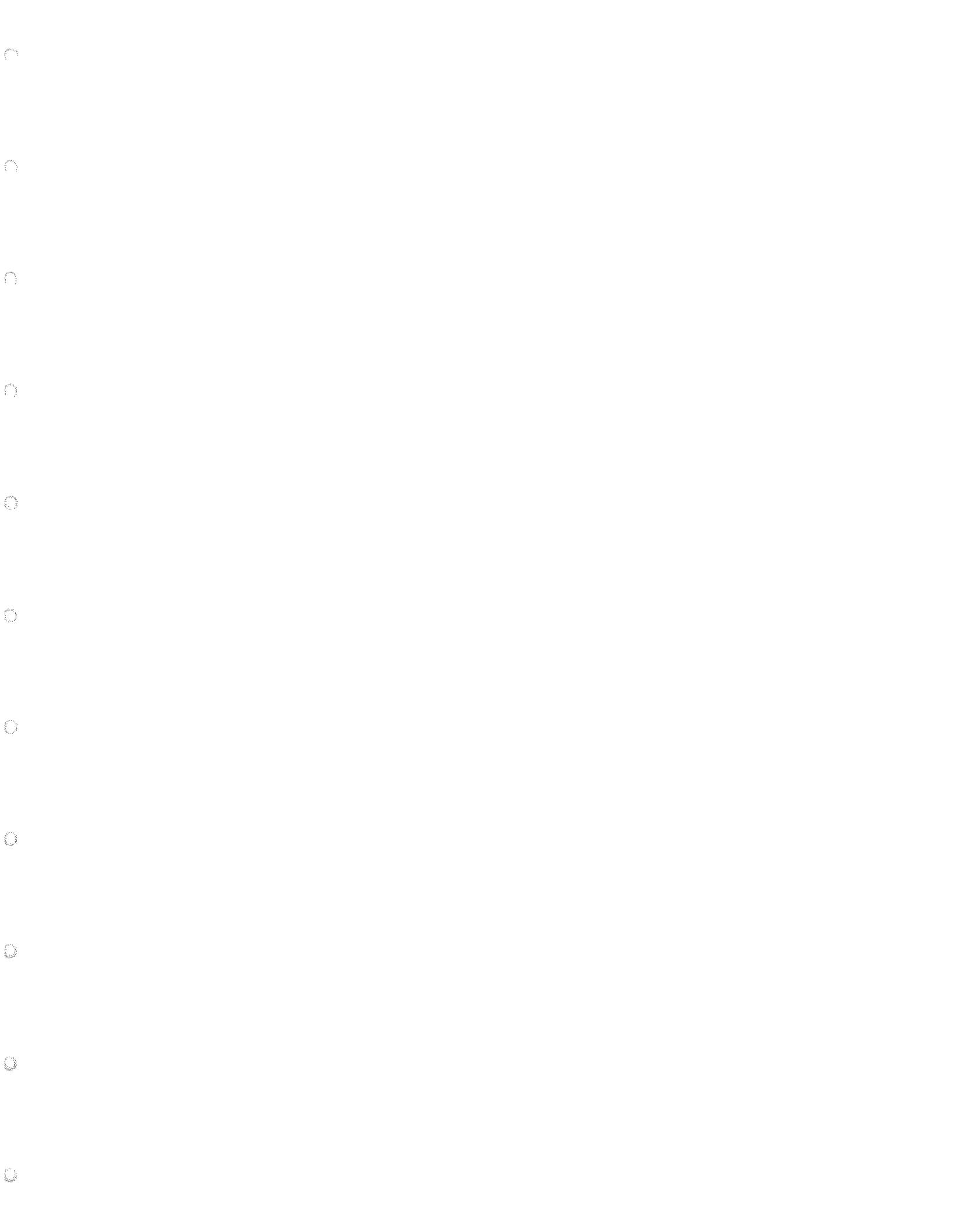
IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

JJW/s  
991308ca.wpd





# West Virginia Infrastructure & Jobs Development Council

**Public Members:**

Russell L. Isaacs, Chairman  
Cottageville  
James D. Williams, Vice-Chairman  
St. Albans  
Lloyd P. Adams, P.E.  
Wheeling  
James L. Harrison, Sr.  
Princeton

1320 One Valley Square  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire  
Executive Secretary

July 8, 1997

Norman L. Kirkham  
Region I Planning & Development Council  
P. O. Box 1442  
Princeton, West Virginia 24740

Re: City of Gary  
Water System Upgrade Project 97W-304

Dear Mr. Kirkham:

The West Virginia Infrastructure and Jobs Development Council (Council) has reviewed the City of Gary's (City) preliminary application regarding its proposed project to upgrade its water system and install the necessary water lines to serve Pageton, Skygusty and Anawalt in later phases (Project). Based on the findings of the Water Technical Review Committee, and the Consolidation Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The City should carefully review the comments of the Water Technical Review Committee which were previously sent to your under cover letter dated April 29, 1997. The City may need to address certain issues raised in said comments as it proceeds with the Project. In addition, enclosed are the minutes of the June 23, 1997 Consolidation Committee meeting which reflects the Committee's referral of the Project to the Council's Funding Committee.

Pursuant to its review of the preliminary application, the Council recommends the City pursue a Small Cities Block Grant of \$801,526 on behalf of the City, a Small Cities Block Grant of \$328,911 on behalf of McDowell County, and USDA Rural Utilities Service (RUS) funding of \$1,656,000. Please contact the Development Office at 558-4010 and the local RUS office for specific information on the steps the City needs to follow to apply for these funds. The City may also be eligible for Infrastructure Fund loan assistance of approximately \$1,000,000. The Council's final decision regarding the specific funding of the Project is deferred pending final determination of the

Norman Kirkham  
July 8, 1997  
Page 2

Project's eligibility and readiness to proceed, and availability of funds in the Infrastructure Fund. **Please note that this letter does not constitute funding approval from these agencies.**

Please immediately notify the Council upon the City's receipt of either a commitment or denial of funding from the Development Office and RUS. Upon such notification, the Council will review the City's need for funding from the Infrastructure Fund and determine whether a notice of eligibility letter should be issued. Such determination will be based in part upon the City's readiness to proceed with the project. Generally, the Council will not issue a notice of eligibility of funding until the Project plans and specifications are complete and the project sponsor has filed a certificate of convenience and necessity application with the Public Service Commission.

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

Sincerely,



Russell L. Isaacs

RLI/bh

Enclosure

cc: Debbie Legg  
Jim Anderson



# West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman

St. Albans

James L. Harrison, Sr., Vice Chairman

Princeton

Lloyd P. Adams, P.E.

Wheeling

Sheild L. Fletcher

Morgantown

980 One Valley Square  
Charleston, West Virginia 25301

Telephone: (304) 558-4607

Facsimile: (304) 558-4609

Susan J. Riggs, Esquire  
Executive Secretary

February 5, 1999

Norman L. Kirkham, Executive Director  
Region I Planning & Development Council  
P.O. Box 1442  
Princeton, West Virginia 24740

Re: City of Gary (Resubmittal) 97W-304  
Water System Upgrade Project

Dear Mr. Kirkham:

The West Virginia Infrastructure and Jobs Development Council (Council), at its February 3, 1999 meeting, reviewed the City of Gary's (the "City") resubmitted preliminary application regarding the above-referenced proposed project which requested that the Council revise the previous funding recommendation to permit the City to utilize a Drinking Water Treatment Revolving Fund (DWTRF) loan in lieu of USDA-Rural Utilities Service funding assistance.

Upon consideration of the City's resubmitted preliminary application, the Council believes it reasonable to recommend that the City pursue a DWTRF loan of \$1,656,000 towards the financing of the project. **Please note that this letter does not constitute funding approval from the DWTRF.**

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

Sincerely,

James D. Williams

JDW/tb

cc: Katy Mallory, P.E.

Debbie Legg

Edward L. Shutt, P.E.

DWTRF  
(4/7/00)

## LOAN AGREEMENT

THIS DRINKING WATER TREATMENT REVOLVING FUND LOAN AGREEMENT (the "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"), acting under the direction of the WEST VIRGINIA BUREAU FOR PUBLIC HEALTH, a division of the West Virginia Department of Health and Human Resources (the "BPH"), and the local entity designated below (the "Local Entity").

CITY OF GARY  
(Local Entity)

W I T N E S S E T H:

WHEREAS, the United States Congress under Section 1452 of the Safe Drinking Water Act, as amended (the "Safe Drinking Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining drinking water treatment revolving funds for the construction, acquisition and improvement of drinking water systems;

WHEREAS, pursuant to the provisions of Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a drinking water treatment revolving fund program (the "Program") to direct the distribution of loans to eligible Local Entities pursuant to the Safe Drinking Water Act;

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

WHEREAS, the Act establishes a permanent perpetual fund known as the "West Virginia Drinking Water Treatment Revolving Fund" (hereinafter the "Fund"), which fund is to be administered and managed by the Authority under the direction of the BPH;

WHEREAS, pursuant to the Act, the Authority and BPH are empowered to make loans from the Fund to Local Entities for the acquisition or construction of drinking water projects by such Local Entities, all subject to such provisions and limitations as are contained in the Safe Drinking Water Act and the Act;

WHEREAS, the Local Entity constitutes a local entity as defined by the Act;

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

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

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

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

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

## ARTICLE I

### Definitions

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

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

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

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

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

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

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

1.8 "Program" means the drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by BPH.

1.9 "Project" means the drinking water project hereinabove referred to, to be constructed or being constructed by the Local Entity in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Entity 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 "DWTRF Regulations" means the regulations set forth in the West Virginia Code of State Regulations.

1.11 "System" means the drinking water system owned by the Local Entity, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

### The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Entity, 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 BPH and the Authority.

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

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

2.6 The Local Entity agrees that it will permit the Authority and BPH and their respective agents to have access to the records of the Local Entity pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the

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

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

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

2.9 The Local Entity shall provide and maintain competent and adequate engineering services satisfactory to the Authority and BPH covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, BPH and the Local Entity at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Entity shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Local Entity shall notify BPH in writing of such receipt.

2.10 The Local Entity shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to BPH when the Project is 90% completed. The Local Entity shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Entity shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of

this Loan Agreement. The Local Entity shall notify BPH in writing of the certified operator employed at the 50% completion stage.

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

2.12 The Local Entity, 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 A and incorporated herein by reference, and forward a copy by the 10th of each month to BPH.

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

### ARTICLE III

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

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

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

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

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

(d) The Local Entity shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim construction financing, the Local Entity 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,

the Local Entity in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

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

(i) to pay Operating Expenses of the System;

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

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

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

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

(b) Covenants substantially as follows:

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

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent

(115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

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

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

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

(vii) That the Local Entity will not render any free services of the System:

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

in either case, the Authority and BPH shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit C;

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

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

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

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

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

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Entity 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, BPH and the Local Entity. 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 Local Entity understands and acknowledges that it is one of several local entities which have applied to the Authority and BPH for loans from the Fund to finance drinking water projects and that the obligation of the Authority to make any such loan is subject to the Local Entity's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Entity specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may purchase the bonds of other local entities set out in the State Project Priority List, as defined in the DWTRF Regulations. The Local Entity further specifically recognizes that all loans will be originated in conjunction with the DWTRF Regulations and with the prior approval of BPH.

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

#### ARTICLE IV

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

4.1 The Local Entity shall, as one of the conditions of the Authority and BPH to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of

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

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

(xi) That the Local Entity shall annually, within six months of the end of the fiscal year, cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and BPH. If the Local Entity receives \$300,000 or more (in federal funds) in a fiscal year, the audit shall be obtained in accordance with the Single Audit Act (as amended from time to time) and the applicable OMB Circular (or any successor thereto). Financial statement audits are required once all funds have been received by the Local Entity. The audit shall include a statement that the Local Entity is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Entity's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

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

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

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

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

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

(xx) That the Local Entity shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate its services to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore such services until all delinquent charges for the services of the System have been fully paid; and

(xxi) That the Local Entity shall submit all proposed change orders to the BPH for written approval. The Local Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

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

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

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

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

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

## ARTICLE V

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

5.1 The Local Entity hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Entity 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 and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Local Entity hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

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

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

## ARTICLE VI

### Other Agreements of the Local Entity

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

6.2 The Local Entity hereby warrants and represents that all information provided to the Authority and BPH in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and BPH shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation

made to the Authority and BPH by the Local Entity in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Entity has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act, the DWTRF Regulations or this Loan Agreement.

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

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

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

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

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Entity from either the Authority or BPH;

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

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

(iv) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Entity to the Authority or BPH.

In the event funds are not available to make all of the Loan, the responsibility of the Authority and BPH to make all the Loan is terminated; provided further that the obligation of the Local Entity to repay the outstanding amount of the Loan made by the Authority and BPH is not terminated due to such non-funding on any balance of the Loan. The BPH agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-funding of the Loan shall not be considered an event of default under this Loan Agreement.

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

CITY OF GARY

[Name of Local Entity]

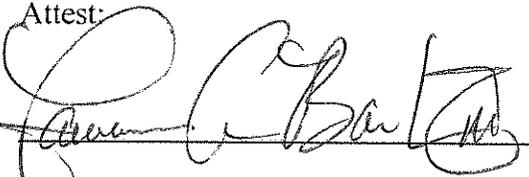
(SEAL)

By: Henry Paul

Its: Mayor

Attest:

Date: July 11, 2000



Its Recorder

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Yorkosh

Its: Director

Attest:

Date: July 11, 2000

  
Secretary-Treasurer

000832/00520  
4/7/00

**EXHIBIT A**

[Form of Monthly Financial Report]

[Name of Local Entity]

[Name of Bond Issue]

Fiscal Year - \_\_\_\_\_

Report Month: \_\_\_\_\_

	<u>ITEM</u>	<u>CURRENT MONTH</u>	<u>TOTAL YEAR TO DATE</u>	<u>BUDGET YEAR TO DATE</u>	<u>BUDGET YEAR MINUS YEAR TO DATE</u>
1.	Gross Revenues Collected				
2.	Operating Expenses				
3.	Other Bond Debt Payments (including Reserve Account Deposits)				
4.	DWTRF Bond Payments (include Reserve Account Deposits)				
5.	Renewal and Replacement Fund Deposit				

Witnesseth my signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Name of Local Entity]

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

## Instructions for Completing Monthly Financial Report

1. You will need a copy of the current fiscal year budget adopted by the Local Entity to complete Items 1 and 2. In Item 1, provide the amount of actual gross revenues for the current month and the total amount year to date in the respective columns. Divide the budgeted annual gross revenues by 12. For example, if gross revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $1200/12$ ). This is the incremental amount for the Budget Year to Date column.
2. In Item 2, provide the amount of actual operating expenses for the current month and the total amount year to date in the respective columns. The SRF administrative fee should be included in the operating expenses. Divide the budgeted annual operating expenses by 12. For example, if operating expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $900/12$ ). This is the incremental amount for the Budget Year to Date column.
3. In Item 3, provide the principal, interest and reserve account payments for all the outstanding bonds of the Local Entity other than this Loan.
4. In Item 4, provide the principal, interest and reserve account payments for this Loan. You need to call the Municipal Bond Commission for the exact amount of these payments and when they begin.
5. In Item 5, provide the amount deposited into the Renewal and Replacement Fund each month. This amount is equal to 2.5% of gross revenues minus the total reserve account payments included in Items 3 and 4. If gross revenues are \$12,000, the Renewal and Replacement Fund should have an amount of \$300 (2.5% of \$12,000), LESS the amount of all reserve account payments in Items 3 & 4. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Entity.
6. The Local Entity must complete the Monthly Financial Report and forward it to the BPH by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the construction of the Project and for 2 years following the completion of the Project. BPH will notify the Local Entity when the Monthly Financial Report no longer needs to be filed.

**EXHIBIT B**

**PAYMENT REQUISITION FORM**

EXHIBIT C

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by BPH and any change orders approved by the Issuer, BPH and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been \_\_\_\_\_.

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

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

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

\_\_\_\_\_.

[SEAL]

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

## EXHIBIT D

### Special Conditions

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

**EXHIBIT E**

[Monthly Payment Form]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1511

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission

on behalf of \_\_\_\_\_ on \_\_\_\_\_.  
[Local Entity] [Date]

Sinking Fund:

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

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

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

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

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

\_\_\_\_\_  
[Name of Local Entity]

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

Enclosure: wire transfer form

**EXHIBIT F**

[Opinion of Bond Counsel for Local Entity]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1511

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, WV 25301-2616

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of a (i) loan agreement dated \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Entity and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and (ii) the issue of a series of revenue bonds of the Local Entity, dated \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning \_\_\_\_\_ 1, \_\_\_\_\_, and ending \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours.

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	\$ <u>1,786.911</u>
Purchase Price of Local Bonds	\$ <u>1,786.911</u>

The Local Bonds shall bear no interest. Commencing December 1, 2001, principal of the Local Bonds is payable quarterly, with an administrative fee of 0.5%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

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

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

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

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

None.

SCHEDULE Y

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	-	-	-
6/01/2001	-	-	-
9/01/2001	-	-	-
12/01/2001	14,891.00	-	14,891.00
3/01/2002	14,891.00	-	14,891.00
6/01/2002	14,891.00	-	14,891.00
9/01/2002	14,891.00	-	14,891.00
12/01/2002	14,891.00	-	14,891.00
3/01/2003	14,891.00	-	14,891.00
6/01/2003	14,891.00	-	14,891.00
9/01/2003	14,891.00	-	14,891.00
12/01/2003	14,891.00	-	14,891.00
3/01/2004	14,891.00	-	14,891.00
6/01/2004	14,891.00	-	14,891.00
9/01/2004	14,891.00	-	14,891.00
12/01/2004	14,891.00	-	14,891.00
3/01/2005	14,891.00	-	14,891.00
6/01/2005	14,891.00	-	14,891.00
9/01/2005	14,891.00	-	14,891.00
12/01/2005	14,891.00	-	14,891.00
3/01/2006	14,891.00	-	14,891.00
6/01/2006	14,891.00	-	14,891.00
9/01/2006	14,891.00	-	14,891.00
12/01/2006	14,891.00	-	14,891.00
3/01/2007	14,891.00	-	14,891.00
6/01/2007	14,891.00	-	14,891.00
9/01/2007	14,891.00	-	14,891.00
12/01/2007	14,891.00	-	14,891.00
3/01/2008	14,891.00	-	14,891.00
6/01/2008	14,891.00	-	14,891.00
9/01/2008	14,891.00	-	14,891.00
12/01/2008	14,891.00	-	14,891.00
3/01/2009	14,891.00	-	14,891.00
6/01/2009	14,891.00	-	14,891.00
9/01/2009	14,891.00	-	14,891.00
12/01/2009	14,891.00	-	14,891.00
3/01/2010	14,891.00	-	14,891.00
6/01/2010	14,891.00	-	14,891.00
9/01/2010	14,891.00	-	14,891.00
12/01/2010	14,891.00	-	14,891.00
3/01/2011	14,891.00	-	14,891.00
6/01/2011	14,891.00	-	14,891.00
9/01/2011	14,891.00	-	14,891.00
12/01/2011	14,891.00	-	14,891.00

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
3/01/2012	14,891.00	-	14,891.00
6/01/2012	14,891.00	-	14,891.00
9/01/2012	14,891.00	-	14,891.00
12/01/2012	14,891.00	-	14,891.00
3/01/2013	14,891.00	-	14,891.00
6/01/2013	14,891.00	-	14,891.00
9/01/2013	14,891.00	-	14,891.00
12/01/2013	14,891.00	-	14,891.00
3/01/2014	14,891.00	-	14,891.00
6/01/2014	14,891.00	-	14,891.00
9/01/2014	14,891.00	-	14,891.00
12/01/2014	14,891.00	-	14,891.00
3/01/2015	14,891.00	-	14,891.00
6/01/2015	14,891.00	-	14,891.00
9/01/2015	14,891.00	-	14,891.00
12/01/2015	14,891.00	-	14,891.00
3/01/2016	14,891.00	-	14,891.00
6/01/2016	14,891.00	-	14,891.00
9/01/2016	14,891.00	-	14,891.00
12/01/2016	14,891.00	-	14,891.00
3/01/2017	14,891.00	-	14,891.00
6/01/2017	14,891.00	-	14,891.00
9/01/2017	14,891.00	-	14,891.00
12/01/2017	14,891.00	-	14,891.00
3/01/2018	14,891.00	-	14,891.00
6/01/2018	14,891.00	-	14,891.00
9/01/2018	14,891.00	-	14,891.00
12/01/2018	14,891.00	-	14,891.00
3/01/2019	14,891.00	-	14,891.00
6/01/2019	14,891.00	-	14,891.00
9/01/2019	14,891.00	-	14,891.00
12/01/2019	14,891.00	-	14,891.00
3/01/2020	14,891.00	-	14,891.00
6/01/2020	14,891.00	-	14,891.00
9/01/2020	14,891.00	-	14,891.00
12/01/2020	14,891.00	-	14,891.00
3/01/2021	14,891.00	-	14,891.00
6/01/2021	14,891.00	-	14,891.00
9/01/2021	14,891.00	-	14,891.00
12/01/2021	14,891.00	-	14,891.00
3/01/2022	14,891.00	-	14,891.00
6/01/2022	14,891.00	-	14,891.00
9/01/2022	14,891.00	-	14,891.00
12/01/2022	14,891.00	-	14,891.00
3/01/2023	14,891.00	-	14,891.00
6/01/2023	14,891.00	-	14,891.00

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+i
9/01/2023	14,891.00	-	14,891.00
12/01/2023	14,891.00	-	14,891.00
3/01/2024	14,891.00	-	14,891.00
6/01/2024	14,891.00	-	14,891.00
9/01/2024	14,891.00	-	14,891.00
12/01/2024	14,891.00	-	14,891.00
3/01/2025	14,891.00	-	14,891.00
6/01/2025	14,891.00	-	14,891.00
9/01/2025	14,891.00	-	14,891.00
12/01/2025	14,891.00	-	14,891.00
3/01/2026	14,891.00	-	14,891.00
6/01/2026	14,891.00	-	14,891.00
9/01/2026	14,891.00	-	14,891.00
12/01/2026	14,891.00	-	14,891.00
3/01/2027	14,891.00	-	14,891.00
6/01/2027	14,891.00	-	14,891.00
9/01/2027	14,891.00	-	14,891.00
12/01/2027	14,891.00	-	14,891.00
3/01/2028	14,891.00	-	14,891.00
6/01/2028	14,891.00	-	14,891.00
9/01/2028	14,891.00	-	14,891.00
12/01/2028	14,891.00	-	14,891.00
3/01/2029	14,891.00	-	14,891.00
6/01/2029	14,891.00	-	14,891.00
9/01/2029	14,890.00	-	14,890.00
12/01/2029	14,890.00	-	14,890.00
3/01/2030	14,890.00	-	14,890.00
6/01/2030	14,890.00	-	14,890.00
9/01/2030	14,890.00	-	14,890.00
12/01/2030	14,890.00	-	14,890.00
3/01/2031	14,890.00	-	14,890.00
6/01/2031	14,890.00	-	14,890.00
9/01/2031	14,890.00	-	14,890.00
Total	1,786,911.00	-	1,786,911.00 *

\*Plus \$1,126.13 one-half percent administrative fee paid quarterly.  
Total fee paid over the life of the loan is \$135,135.60.

GARY MUNICIPAL WATER SYSTEM  
GARY, McDOWELL COUNTY, WEST VIRGINIA

**BE IT RESOLVED**, that the City of Gary, at a duly constituted City Council Meeting held on September 21, 1999, the City Council approved, on first reading, this ordinance increasing the water and sewer rates which rates will be put in to effect beginning December 1, 1999.

The second, third (and final reading) hearing will be held on October 5, 1999 and November 9, 1999.

The rate increases are as follows:

**WATER RATE:**

**PROPOSED:**

\$5.65 per 1,000 gallons of water used each month.

MINIMUM CHARGE PER MONTH ..... \$16.95

**MINIMUM CHARGE:**

	<b><u>PRESENT</u></b>	<b><u>PROPOSED</u></b>
5/8-inch meter	n/a	\$ 16.95
3/4-inch meter	\$ 13.50	25.43
1 -inch meter	26.45	42.38
1 1/4-inch meter	41.26	61.87
1 1/2-inch meter	59.45	84.75
2 -inch meter	105.58	135.60
2 1/2-inch meter	171.58	n/a
3 -inch meter	238.58	254.25
4 -inch meter	422.34	423.75
6 -inch meter	950.34	847.50
8 -inch meter	1689.58	1356.00

No bill will be rendered for less than the above amounts, according to the size of the meter installed.

**Delayed Payment Penalty**

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten-percent (10%) will be added to the current amount unpaid. This delayed payment penalty is not interest and is to only be collected once for each bill where appropriate.

**Connection Charge**

A fee of two-hundred fifty dollars (\$250.00) will be charged for each new connection to the system.



**Reconnection Charge**

A fee of twenty dollars (\$20.00) will be charged for each time service is reconnected to the system.

**SEWER RATE:**

Two dollars and 50 cents (\$2.50) per each 1,000 gallons of water used each month. Minimum charge per month Six dollars seventy-five cents (\$6.75). No sewer bill will be rendered for less than \$6.75.

**DEPOSIT:** A Fifty Dollar (\$50.00) deposit to secure delinquency required on new and reconnection accounts and maintained for twelve (12) months, at which time it will be applied to customer's water account.

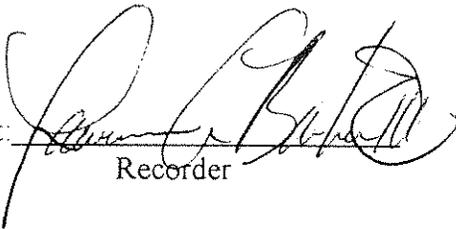
**Passed Council:**

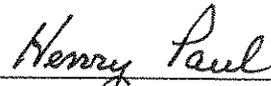
1st reading: September 21, 1999

2nd reading: October 5, 1999

3rd reading: November 9, 1999

Attest:

  
Recorder

  
\_\_\_\_\_  
Mayor

Handwritten text, possibly a signature or initials.

MINUTES GARY CITY COUNCIL MEETING

September 21, 1999  
6:00 P. M.

In attendance

Henry Paul, Mayor

Council Persons

Edward Wade, Bobby Orr, Leodis B. Cloyd, William Smith, Randall David.

The Council was called to order by Mayor Paul with opening prayer by Edward Wade.

Evelyn Finch appeared before Council and ask that \$25.00 more be refunded on the deposit that was placed on her Mother's house located in Filbert. Council informed her that she had received the proper amount.

On Motion by William Smith and Seconded by Bobby Orr the minutes were accepted as presented.

On Motion of Bobby Orr and Seconded by William Smith the financial statement was accepted and the payment of bills was approved subject to funds being available by a 6 yes and 0 no vote.

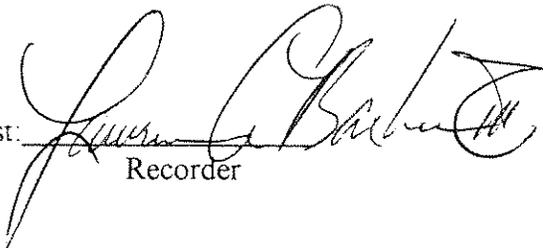
✓ On Motion of Bobby Orr Seconded by William Smith the first reading of the ordinance increasing water rates was approved as shown in the attachment to these minutes.

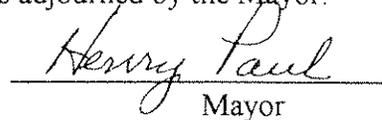
On Motion of Randall David, Seconded by William Smith, the Council went in to Executive Session to discuss personnel matters brought on by the closing of Keystone Bank. Time 6:30.

On Motion of William Smith, Seconded by Bobby Orr, the Council returned to open Session. Time 6:52.

Nothing else to be done for the City the meeting was adjourned by the Mayor.

Attest:

  
Recorder

  
Mayor



*City of Gary  
Council Meeting  
October 5, 1999*

Attendance

Edward Wade, Council  
Leodis Cloyd, Council  
Randall David, Council  
Bobbie Orr, Council  
William Smith, Council  
Henry Paul, Mayor  
Lawrence Barber, Recorder

Public

Robert Blair

Meeting

Mayor Paul called the meeting to order.

Mr. Wade gave the prayer.

Robert Blair was the only one present from the public but had nothing to add to the council meeting.

Mr. Smith made a motion to accept the minutes of the regular council meeting, Mr. Cloyd seconded the motion, and all were in favor.

Mrs. Orr made a motion to accept the financial report, Mr. Wade seconded the motion, and all were in favor.

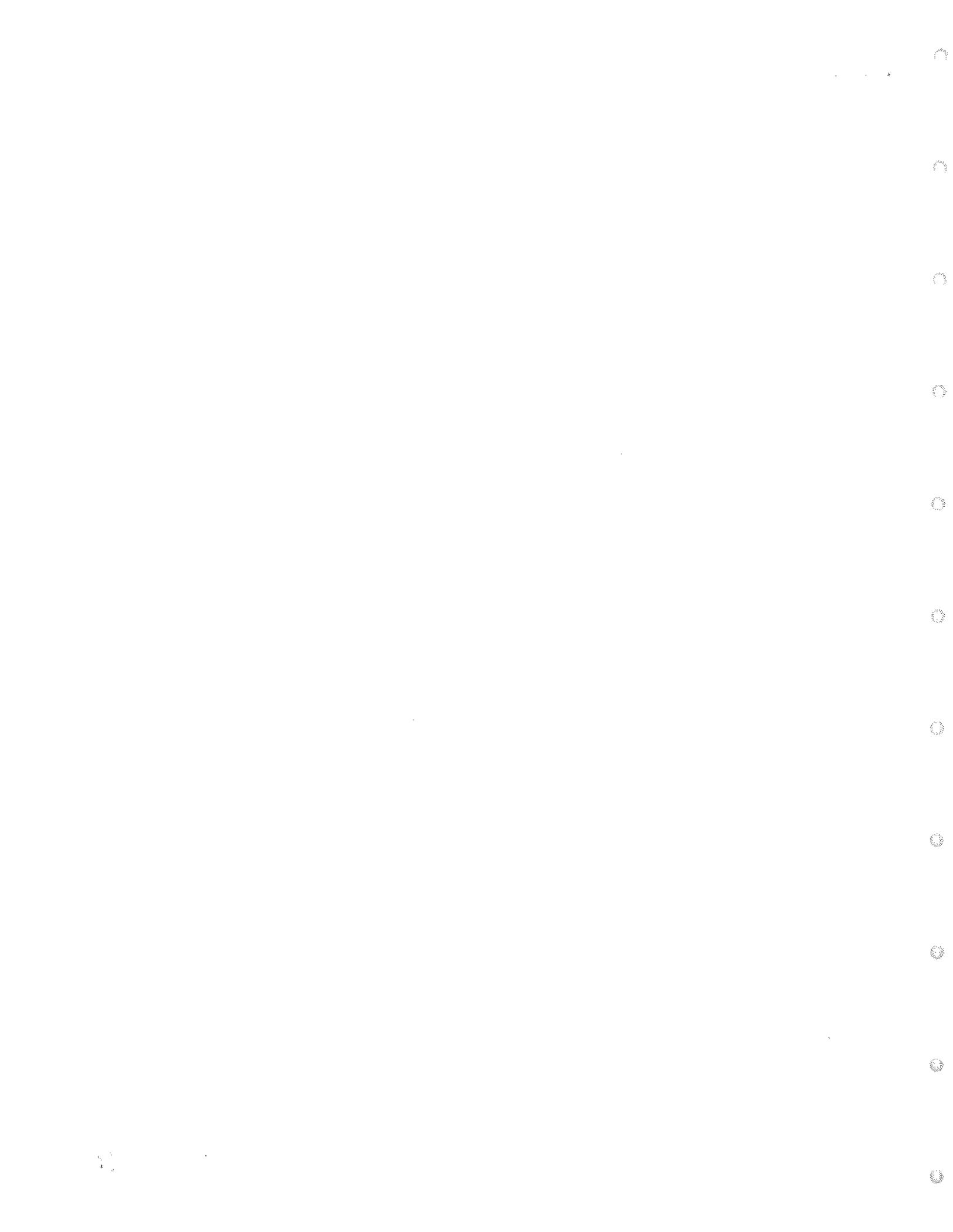
Mr. David mentioned about cleaning the back alley in Thorpe. Mayor Paul said he will remind the city workers to go back and finish the clean up.

No other council members had anything to add.

Mayor Paul talked about the second reading on the water ordinance. Mr. Barber added that the first reading sheet needs to be revised. Mr. Barber asked for a motion to amend the first reading sheet. Mr. Smith made a motion to amend the first reading sheet, Mrs. Orr seconded the motion, and all were in favor.

✓ Mayor Paul asked for a motion to approve the second reading on the water ordinance. Mrs. Orr made a motion, Mr. Smith seconded the motion, and all were in favor.

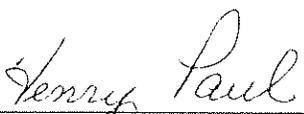
Mayor Paul asked for a motion to allow the individuals currently leasing the shop to be able to sub-lease the other shop space as seen necessary and will be brought to council when they want to sub-lease. Mr. David made a motion,



Mr. Smith seconded the motion, and all were in favor.

Mayor Paul asked for a motion to accept the license agreement from the Public Land Corporation regarding the installation of the new water lines at stream crossings in the City of Gary in the upcoming water project. Mrs. Orr made a motion, Mr. Smith seconded the motion, and all were in favor.

Meeting was then adjourned.

  
\_\_\_\_\_  
MAYOR

Attest:   
\_\_\_\_\_  
RECORDER

**City of Gary  
Council Meeting  
November 9, 1999**

**Attendance**

*Edward Wade, Council  
Leodis Cloyd, Council  
Randall David, Council  
Bobbie Orr, Council  
William Smith, Council  
Rick Murensky, Consulting Attorney  
Henry Paul, Mayor  
Lawrence Barber III, Recorder*

**Public**

*Robert Blair*

**Meeting**

*Mayor Paul called the meeting to order.*

*Mr. Wade gave the prayer.*

*Robert Blair was the only person present from the public but had nothing to add to the council meeting.*

*Mrs. Orr made a motion to accept the minutes of the regular council meeting, Mr. Wade seconded the motion and all were in favor.*

*Mrs. Orr made a motion to accept the financial report, Mr. Wade seconded the motion, and all were in favor.*

*Mr. David asked Mayor Paul about working on the hill in Thorpe. Mayor Paul said that the city workers have finished the job.*

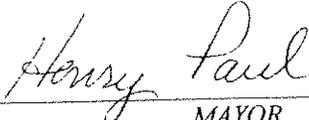
✓ *Mayor Paul turned the meeting over to Attorney Murensky. Murensky said that Mayor Paul and former City Attorney Robert Blair asked him to continue working with the City on the water project due to Murensky being familiar with the PSD rules as he worked on the City of Welch water project. Attorney Murensky talked about ordinance notices. According to law, the City of Gary needs to publish notices in at least two newspapers. The notices were published in the Industrial News from Iaeger and the Welch Daily News in Welch as Class I legal advertisements and were published twice within the required time periods. Murensky went on to say that the City of Gary needs to follow the PSD rules as the new rates go into effect January 1, 2000 and will show up on the February 2000 bill. Murensky said that the Council needs to vote on the Rate Change Form I, which will increase the water rates. Murensky went on to say that everything has been posted in locations that apply with the Federal Rules. Murensky said that the City must abide by the PSD Rules. Murensky says that he has already prepared a press release about the project. Murensky says that the new resolution with the new rates needs to be sent to the PSD. Murensky said he will send legal advertisements in within 20 days and will issue the press release with permission from the Council. Murensky said that the public had until today at 6:00 p.m. to question the rate increase. Murensky turned the meeting back over to Mayor Paul.*

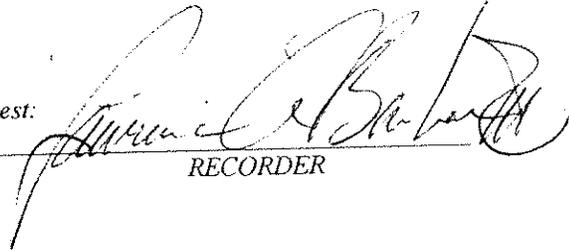
*Mayor Paul asked for a motion from council. Mr. Smith made a motion to pass the resolution, to okay the final reading and for Murensky to go ahead as necessary, Mrs. Orr seconded the motion, and all were in favor.*

*Mayor Paul then asked for a motion for a resolution for the WV State Road to take care of all the city streets. The City of Gary will turn over all (32) streets to the State Road to take care of due to the lack of man power by the city.*

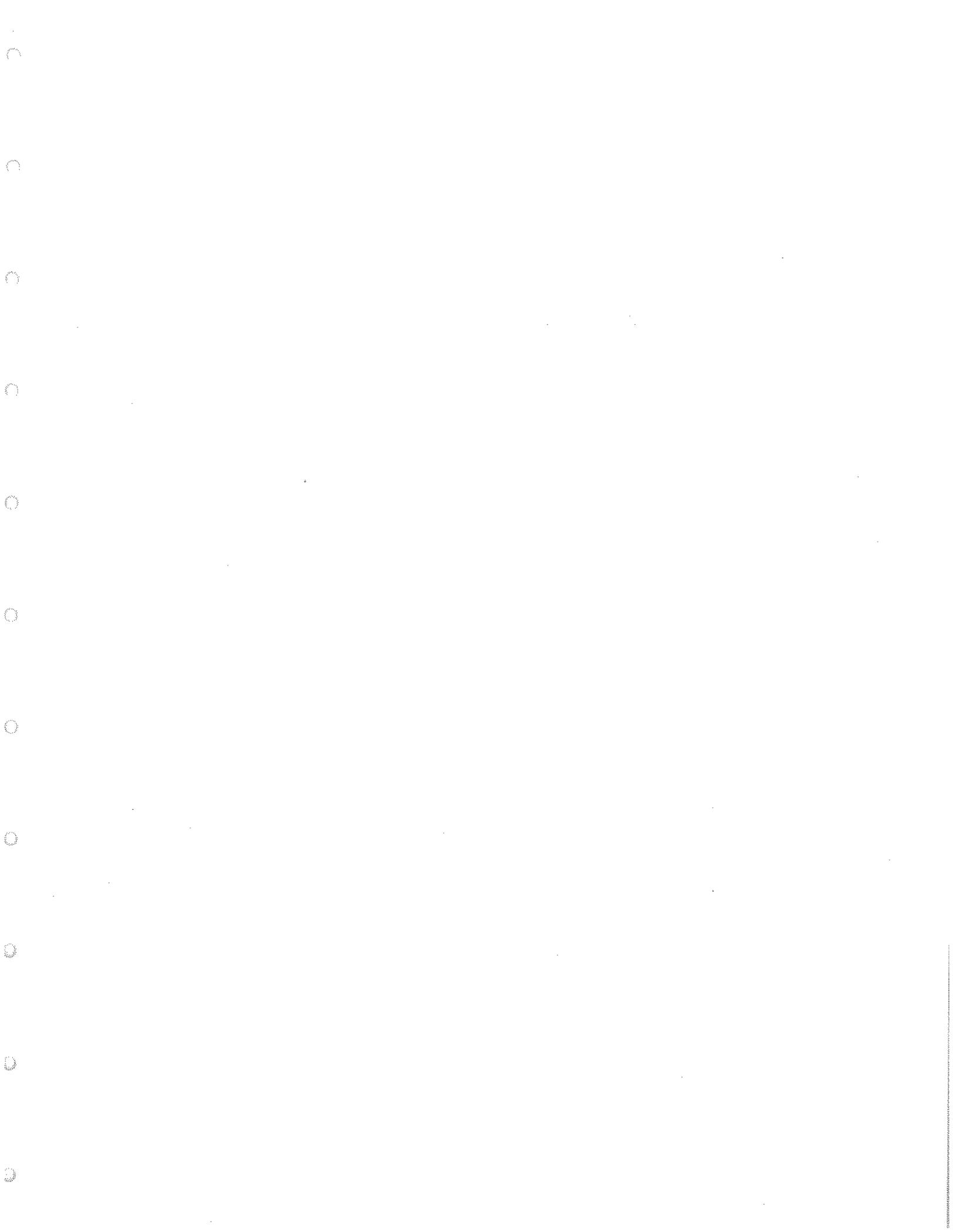
lack of equipment by the city, and lack of finances with the city, for maintenance purposes. Mr. David made a motion, Mr. Smith seconded the motion, and all were in favor.

Mayor Paul then adjourned the meeting.

  
\_\_\_\_\_  
MAYOR

Attest:   
\_\_\_\_\_  
RECORDER

\*\*\*\*\*MERRY CHRISTMAS AND HAPPY NEW YEAR 2000\*\*\*\*\*



**AFFIDAVIT OF PUBLICATION:**

State of West Virginia  
County of McDowell, to wit:

I, Irene Wooten, being first duly sworn upon my oath, do depose and say that I am the Legal Editor of the Welch Daily News, Inc., a corporation, publisher of the newspaper entitled **The Welch Daily News**, a Republican newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily except weekends and holidays, for at least fifty weeks during the calendar year, in the Municipality of Welch, McDowell County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and McDowell County, West Virginia; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of \_\_\_\_\_

CITY OF GARY

GARY, WV 24836

(ORDINANCE)

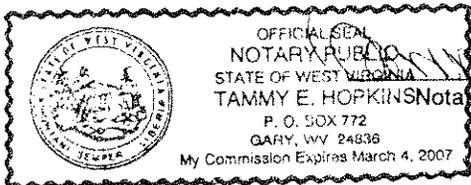
was duly published in said newspaper once a week for 1 successive weeks, (Class I), commencing with the issue of the 29th day of OCTOBER, 1999, and ending with the issue of the 29th day of OCTOBER, 1999 [and was posted at the (if required) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_]; that said annexed notice was published on the following dates: \_\_\_\_\_ and that the cost of publishing said annexed notice as aforesaid was \$ 34.09.

*Irene Wooten*  
Irene Wooten, Legal Editor  
The Welch Daily News

Taken subscribed and sworn to before me in my said county this 3rd

day of November, 1999.

My Commission expires March 4, 2007



**LEGAL NOTICE**

The following Ordinance was introduced at a meeting of the Gary City Council on September 21, 1999. The purpose of the Ordinance is to increase water rates and the general title is an Ordinance to increase water rates. The final date on the adoption of this Ordinance is scheduled at the City of Gary Council Meeting on November 9, 1999 at 6:00 o'clock p.m. at Gary City Hall, Power House Road, Gary, McDowell County, West Virginia. This Ordinance is available for public inspection at the Gary City Hall during normal business hours. All interested persons may appear at the meeting on November 9, 1999 at 6:00 o'clock p.m. and be heard with respect to the proposed Ordinance. The proposed Ordinance is as follows:

**GARY MUNICIPAL WATER SYSTEM**

GARY, MCDOWELL COUNTY, WEST VIRGINIA

**BE IT RESOLVED**, that the City of Gary, at a duly constituted City Council Meeting held on September 21, 1999, the City Council approved, on first reading, this ordinance increasing the water and sewer rates which rates will be put in to effect beginning December 1, 1999.

The second, third (and final reading) hearing will be held on October 5, 1999 and November 9, 1999.

The rate increases are as follows:

**WATER RATE:**

**PROPOSED:**

\$5.65 per 1,000 gallons of water used each month.

MINIMUM CHARGE PER MONTH.....\$16.95

**MINIMUM CHARGE:**

	<b>PRESENT</b>	<b>PROPOSED</b>
5/8-inch meter	n/a	\$ 16.95
3/4-inch meter	\$ 13.50	25.43
1-inch meter	26.45	42.38
1 1/4-inch meter	41.26	61.87
1 1/2-inch meter	59.45	84.75
2-inch meter	105.58	135.60
2 1/2-inch meter	171.58	n/a
3-inch meter	238.58	254.25
4-inch meter	422.34	423.75
6-inch meter	950.34	847.50
8-inch meter	1689.58	1356.00

No bill will be rendered for less than the above amounts, according to the size of the meter installed.

**Delayed Payment Penalty**

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten-percent (10%) will be added to the current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each bill where appropriate.

**Connection Charge**

A fee of two-hundred fifty dollars (\$250.00) will be charged for each new connection to the system.

**Reconnection Charge**

A fee of twenty dollars (\$20.00) will be charged for each time service is reconnected to the system.

**SEWER RATE:**

Two dollars and 50 cents (\$2.50) per each 1,000 gallons of water used each month. Minimum charge per month Six dollars seventy-five cents (\$6.75). No sewer bill will be rendered for less than \$6.75.

**DEPOSIT:**

A fifty Dollar (\$50.00) deposit to secure delinquency required on new and reconnection accounts and maintained for twelve (12) months, at which time it will be applied to customer's water account.

This Notice dated October 27, 1999.

HENRY PAUL, Mayor  
CITY OF GARY

10/29/1TC

10A

**AFFIDAVIT OF PUBLICATION:**

State of West Virginia  
County of McDowell, to wit:

I, Ruby F. McCoy, being first duly sworn upon my oath, do depose and say that I am the Asst. Editor of the Welch Daily News, Inc., a corporation, publisher of the newspaper entitled **The Industrial News**, a Democrat newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the Municipality of Iaeger, McDowell County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and McDowell County, West Virginia; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice

of \_\_\_\_\_  
increase in water rates, Gary, \_\_\_\_\_

\_\_\_\_\_ was duly published in said newspaper once a week for 1 successive weeks, (Class I), commencing with the issue of

the 3 day of Nov., 1999, and ending with

the issue of the 3 day of Nov., 1999 (and was posted at the (if required)

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_); that said annexed notice was published on the following dates: 11/3/99

\_\_\_\_\_ and that the cost of publishing said annexed notice as aforesaid was \$ 34.44

*Ruby F. McCoy*  
Ruby F. McCoy, Asst. Editor  
The Industrial News

Taken subscribed and sworn to before me in my said county this 3 day of Nov., 1999.  
My Commission expires June 21, 2004.

*Irene Wooten*  
Notary Public, State of West Virginia

**LEGAL NOTICE**

The following Ordinance was introduced at a meeting of the Gary City Council on September 21, 1999. The purpose of the Ordinance is to increase water rates and the general title is an Ordinance to increase water rates. The final vote on the adoption of this Ordinance is scheduled at the City of Gary Council Meeting on November 9, 1999 at 6 o'clock p.m. at Gary City Hall, Power House Road, Gary, McDowell County, West Virginia. This Ordinance is available for public inspection at the Gary City Hall during normal business hours. All interested persons may appear at the meeting on November 9, 1999 at 6 o'clock p.m. and be heard with respect to the proposed Ordinance. The proposed Ordinance is as follows:

**GARY MUNICIPAL WATER SYSTEM**  
**GARY, McDOWELL COUNTY, WEST VIRGINIA**  
**BE IT RESOLVED**, that the City of Gary, at a duly constituted City Council Meeting held on September 21, 1999, the City Council approved, on first reading, this ordinance increasing the water and sewer rates which rates will be put in to effect beginning December 1, 1999.

The second, third (and final reading) hearing will be held on October 5, 1999 and November 9, 1999.

The rate increases are as follows:  
**WATER RATE:**  
**PROPOSED:**  
\$6.85 per 1,000 gallons of water used each month.  
**MINIMUM CHARGE PER MONTH \$18.95**

**MINIMUM CHARGE:**

	PRESENT	PROPOSED
5/8-inch meter	n/a	\$16.95
3/4-inch meter	\$13.50	25.43
1 -inch meter	26.45	42.38
1 1/4-inch meter	41.26	61.87
1 1/2-inch meter	59.45	84.75
2 -inch meter	105.58	135.60
2 1/2-inch meter	171.58	n/a
3 -inch meter	238.58	254.25
4 -inch meter	422.34	423.75
6 -inch meter	950.34	847.50
8 -inch meter	1689.58	1356.00

No bill will be rendered for less than the above amounts, according to the size of the meter installed.

**Delayed Payment Penalty**  
The above tariff is net. On all current usage billings not paid within twenty (20) days, ten-percent (10%) will be added to the current amount unpaid. This delayed payment penalty is not interest and is to only be collected once for each bill where appropriate.

**Connection charge**  
A fee of two-hundred fifty dollars (\$250.00) will be charged for each new connection to the system.

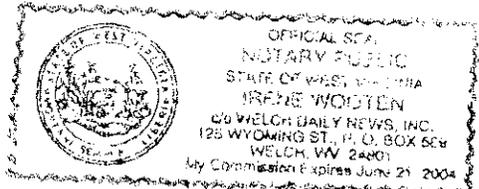
**Reconnection Charge**  
A fee of twenty dollars (\$20.00) will be charged for each time service is reconnected to the system.

**SEWER RATE:**  
Two dollars and 50 cents (\$2.50) per each 1,000 gallons on water used each month. Minimum charge per month Six dollars seventy-five cents (\$6.75). No sewer bill will be rendered for less than \$6.75.

**DEPOSIT**  
A Fifty Dollar (\$50.00) deposit to secure delinquency required on new and reconnection accounts and maintained for twelve (12) months, at which time it will be applied to customer's water account.

This Notice dated October 27, 1999.  
HENRY PAUL, MAYOR  
CITY OF GARY

11/3/1c



10B

**AFFIDAVIT OF PUBLICATION:**

State of West Virginia  
County of McDowell, to wit:

I, Irene Wooten, being first duly sworn upon my oath, do depose and say that I am the Legal Editor of the Welch Daily News, Inc., a corporation, publisher of the newspaper entitled **The Welch Daily News**, a Republican newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily except weekends and holidays, for at least fifty weeks during the calendar year, in the Municipality of Welch, McDowell County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and McDowell County, West Virginia; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of \_\_\_\_\_

CITY OF GARY - HENRY PAUL, MAYOR

GARY, WV 24836

(RATE CHANGE)

was duly published in said newspaper once a week for 2 successive weeks, (Class II), commencing with the issue of the 12th day of NOVEMBER, 1999, and ending with the issue of the 19th day of NOVEMBER, 1999 [and was posted at the (if required)

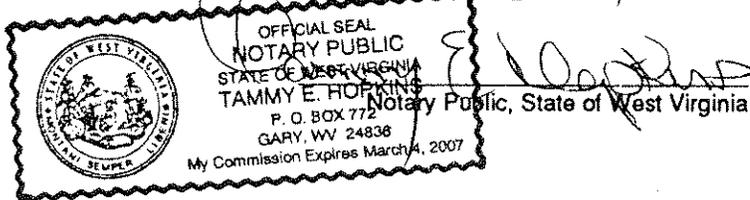
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_]; that said annexed notice was

published on the following dates: \_\_\_\_\_ and that the cost of publishing said annexed notice as aforesaid was \$ 59.53.

Irene Wooten  
Irene Wooten, Legal Editor  
The Welch Daily News

Taken subscribed and sworn to before me in my said county this 19th day of NOVEMBER, 1999.

My Commission expires March 4, 2007.



**LEGAL NOTICE**

**MUNICIPAL RATE CHANGE FORM NO. 1  
PUBLIC NOTICE OF CHANGE IN RATES BY  
MUNICIPALITIES**

NOTICE is hereby given that The City of Gary, a public utility, has adopted by Ordinance on November 9, 1999, a tariff containing increased rates, tolls and charges for furnishing water service to 625 customers in the City of Gary, in the County of McDowell, State of West Virginia.

The proposed increase rates and charges will become effective January 1, 2000, unless otherwise ordered by the Public Service Commission and will produce approximately \$48,726.00 annually in additional revenue, an increase of 25.6%. The average monthly bill for various classes of customers will be changed as follows:

	(S) INCREASE	INCREASE (%)
Residential	\$ 5.03	25.6 %
Commercial	\$ 47.13	25.6 %
Industrial	\$ 9.85	25.6 %
Resale	\$ _____	_____ %
Other	\$ _____	_____ %

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive that are greater or less than average. Furthermore, the requested rates and changes are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

- (1) Any customers aggrieved by the changed rates or charges who present to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipality operated public utility, or
- (2) Any customer who is served by a municipality operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or changes and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or
- (3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to The Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company, GARY CITY HALL, GARY, WEST VIRGINIA.

A copy of the proposed rates is available for public inspection at the Office of the Secretary of the PUBLIC SERVICE COMMISSION at 201 Brooks Street Charleston, West Virginia.

Dated the 9th day of November, 1999.  
Henry Paul, Mayor

11/12, 19/2TC

10C



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

BOND ORDINANCE

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I	
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS	
Section 1.01. Authority of this Bond Legislation .....	1
Section 1.02. Definitions .....	2
Section 1.03. Bond Legislation Constitutes Contract .....	9
Section 1.04. Findings .....	9
ARTICLE II	
AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT	
Section 2.01. Authorization of Acquisition and Construction of the Project .....	11
ARTICLE III	
AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT	
Section 3.01. Authorization of Bonds .....	12
Section 3.02. Terms of Bonds .....	12
Section 3.03. Execution of Bonds .....	13
Section 3.04. Authentication and Registration .....	13
Section 3.05. Negotiability, Transfer and Registration .....	13
Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost .....	14
Section 3.07. Bonds not to be Indebtedness of the Issuer .....	14
Section 3.08. Bonds Secured by Pledge of Gross Revenues .....	14
Section 3.09. Form of Bonds .....	15
Section 3.10. Sale of Bonds; Authorization and Execution of Loan Agreement .....	24
Section 3.11. Amended Schedule B Filing .....	24

ARTICLE IV	
[Reserved]	25

ARTICLE V	
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	
APPLICATION OF BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS	
Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	30
Section 6.02. Disbursements from Bond Construction Trust Fund	30

ARTICLE VII	
ADDITIONAL COVENANTS OF THE ISSUER	
Section 7.01. General Covenants of the Issuer	32
Section 7.02. Bonds not to be Indebtedness of the Issuer	32
Section 7.03. Bonds Secured by Pledge of Gross Revenues	32
Section 7.04. Initial Schedule of Rates and Charges	32
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	34
Section 7.08. Books, Records and Audit	36
Section 7.09. Rates	38
Section 7.10. Operating Budget and Monthly Financial Report	39
Section 7.11. Certificate of Consulting Engineers; Engineering Services	39
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	42
Section 7.17. Completion of Project; Permits and Orders	42
Section 7.18. Compliance With Loan Agreement and Law	42
Section 7.19. Statutory Mortgage Lien	42
Section 7.20. PSC Order	42
Section 7.21. Contracts; Public Releases	42

Section 7.22. Securities Laws Compliance .....	43
Section 7.23. Covenant to Amend Bond Legislation .....	43

**ARTICLE VIII**

**INVESTMENT OF FUNDS**

Section 8.01. Investments .....	44
Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds .....	44

**ARTICLE IX**

**DEFAULT AND REMEDIES**

Section 9.01. Events of Default .....	45
Section 9.02. Remedies .....	45
Section 9.03. Appointment of Receiver .....	45

**ARTICLE X**

**PAYMENT OF BONDS**

Section 10.01. Payment of Bonds .....	47
---------------------------------------	----

**ARTICLE XI**

**MISCELLANEOUS**

Section 11.01. Modification or Amendment .....	48
Section 11.02. Bond Legislation Constitutes Contract .....	48
Section 11.03. Severability of Invalid Provisions .....	48
Section 11.04. Headings, Etc. ....	48
Section 11.05. Conflicting Provisions Repealed .....	48
Section 11.06. Covenant of Due Procedure .....	48
Section 11.07. Statutory Notice of Public Hearing .....	49
Section 11.08. Effective Date .....	49

**EXHIBIT A - PROJECT DESCRIPTION**

**EXHIBIT B - NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE**

CITY OF GARY

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE CITY OF GARY; AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,000,000, TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; 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; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

Be It Ordained and Enacted by the Council of the City of Gary, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Bond Legislation. This Bond Legislation is enacted pursuant to the provisions of Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended, and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Bond Legislation unless the context expressly requires otherwise.

"Act" means, collectively, Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended and in effect on the date of enactment of this Bond Legislation.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 2000 A Bonds on behalf of the Program, or any other agency of the State that succeeds to the function of the Authority.

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

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

"Bondholder," "Holder," "Owner" or "Registered Owner" or any similar term means any person who shall be the registered owner of any Outstanding Bond as hereinafter defined.

"Bond Legislation," "Ordinance" or "Bond Ordinance" means this Bond Ordinance in its present form and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bonds" means the Series 2000 A Bonds and any Parity Bonds hereafter issued within the terms, restrictions and conditions contained in this Bond Legislation.

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

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any other agency, board or department of the State that succeeds the function of the BPH.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 2000 A Bonds in substantially the form set forth in Section 3.08 hereof.

"Closing Date" means the date upon which there is an exchange of the Series 2000 A Bonds for all or a portion of the proceeds of the Series 2000 A Bonds from the Authority and BPH.

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

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

"Completion Date" means the completion date of the Project, as defined in the DWTRF Regulations.

"Consulting Engineers" means Stafford Consultants, Princeton, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended.

"Cost of Project" or "Costs" means those costs described in Section 1.04 E. hereof to be a part of the cost of the acquisition and construction of the Project.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Series 2000 A Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

"DWTRF Act" means Chapter 16, Article 13C of the West Virginia Code of 1931, as amended and in effect on the date of the enactment of this Bond Legislation.

"DWTRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"DWTRF Regulations" means the regulations for the Program set forth in Title 64, Part 49 of the West Virginia Code of State Regulations.

"Event of Default" means any event or occurrence specified in Section 9.01 hereof.

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

"Fund" means the "West Virginia Drinking Water Treatment Revolving Fund" established by the State, administered by the BPH and funded by capitalization grants awarded to the State pursuant to the federal Safe Drinking Water Act, as amended, for the purpose of

establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of drinking water facilities.

"Governing Body" means the Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently 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.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System 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) or any Tap Fees, as hereinafter defined.

"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.

"Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or 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 City of Gary, a municipal corporation and political subdivision of the State in McDowell County, West Virginia, and, when appropriate, also means the Governing Body thereof and any department, board, organization or institution thereof in control of the management and operation of the System, as hereinafter defined.

"Loan Agreement" means the Drinking Water Treatment Revolving Fund Loan Agreement entered into by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2000 A Bonds from the Issuer by the Authority.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2000 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2000 A 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 2000 A 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 hereafter defined.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 2000 A Bonds and is not acquired in order to carry out the governmental purpose of the Series 2000 A Bonds.

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

"Outstanding" when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such 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 such Bond 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 Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that use as a member of the general public shall not be taken into account.

"Program" means the drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by the BPH.

"Project" means the acquisition and construction of certain extensions, additions, betterments and improvements to the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

"PSC" means the Public Service Commission of West Virginia or any successor to the functions thereof.

"PSC Order" means the final order of the PSC, granting the Issuer a certificate of convenience and necessity to construct the Project and approving the financing thereof.

"Qualified Investments" means and include 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; the Tennessee Valley Authority; or the Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligation 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 Federal Deposit Insurance Corporation ("FDIC"), 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 owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; 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 Investor Service, Inc., or Standard and Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

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

"Regulations" means the regulations promulgated under the Code.

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

"Revenue Fund" means the fund created by Section 5.01 hereof.

"Series 2000 A Bonds" means the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), authorized to be issued by this Bond Legislation.

"Series 2000 A Bonds Reserve Account" means the account created by Section 5.02 hereof.

"Series 2000 A Bonds Reserve Requirement" means as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2000 A Bonds in the then current or any succeeding Fiscal Year.

"Series 2000 A Bonds Sinking Fund" means the fund created 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 Bond Legislation and when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 2000 A Bonds; provided, that any matter intended by this Bond Legislation to be included in the Supplemental Resolution with respect to the Series 2000 A Bonds and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Gross Revenues not required by this Bond Legislation to be set aside and held for the payment of or security for the Series 2000 A Bonds, including the Series 2000 A Bonds Reserve Account and the Renewal and Replacement Fund.

"System" means the complete existing water system of the Issuer, and shall include any extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

"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, and words importing persons shall include firms and corporations. Words importing the masculine, feminine or neutral gender include any other gender.

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

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

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2000 A 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 of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a municipal corporation and political subdivision of the State in McDowell County of said State. The Issuer presently owns and operates a public waterworks system. However, the Issuer deems it necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed the Project in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by the BPH and are on file with the Issuer.

B. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the Authority, which administers the Fund pursuant to the DWTRF Act.

C. The estimated maximum cost of acquisition and construction of the Project is \$4,400,000, of which approximately \$2,000,000 will be obtained from proceeds of the Series 2000 A Bonds, approximately \$1,400,000 will be obtained from proceeds of a grant from the United States Department of Housing and Urban Development (Small Cities Block Grant through the State) and approximately \$ 1,000,000 will be obtained from proceeds of a grant from the Appalachian Regional Commission.

D. 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 Operating Expenses of the System, the principal of and interest, if any, on the Series 2000 A Bonds, and payments into all funds and accounts and other payments provided for in this Bond Legislation.

E. It is deemed necessary for the Issuer to issue the Series 2000 A Bonds in the aggregate principal amount of not more than \$2,000,000 to permanently finance a portion of the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, on the Series 2000 A Bonds prior to and during acquisition or construction of the Project and for a period not to exceed six months after completion of acquisition or construction of the Project; amounts which may be deposited in

the Series 2000 A Bonds Reserve Account; engineering, fiscal and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expenses, any fees or expenses of the Authority and the BPH, including the DWTRF Administrative Fee, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2000 A 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 the 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 2000 A Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

F. There are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. The period of usefulness of the System after completion of the Project is not less than 35 years.

H. It is in the best interests of the Issuer that the Series 2000 A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement, relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2000 A Bonds, or will have so complied prior to the issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Infrastructure Council and the obtaining of a certificate of convenience and necessity from the PSC Order, the time for rehearing and appeal of which will have expired or will have been waived prior to the issuance of the Series 2000 A Bonds.

J. The Infrastructure Council has approved the Project.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$4,400,000, in accordance with the plans and specifications prepared by the Consulting Engineers, approved by the BPH and the Issuer and heretofore filed in the office of the Governing Body. The proceeds of the Series 2000 A Bonds shall be applied as provided in Article VI hereof.

The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, which are in an amount and otherwise compatible with the plan of financing submitted to the Program.

### 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 funding a reserve account for the Series 2000 A Bonds, paying the Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, as shall be specified in the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2000 A Bonds of the Issuer. The Series 2000 A Bonds shall be issued as a single bond, designated as "Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program)," in the aggregate principal amount of not more than \$2,000,000, and shall have such terms as set forth hereinafter or in the Supplemental Resolution. The proceeds of the Series 2000 A Bonds remaining after funding of the Series 2000 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2000 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly 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 the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2000 A 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 2000 A Bonds, if any, shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2000 A Bonds shall be issued in the form of one bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2000 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2000 A Bonds shall be exchangeable at the option and expense of the Holder for another fully registered Bond in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments

of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall bear interest, if any, and shall be dated as set forth in the Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2000 A Bonds shall be executed in the name of the Issuer by the Mayor and attested by the Recorder, and the seal of the Issuer shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been 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 2000 A 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 form set forth in Section 3.09 hereof, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2000 A Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2000 A 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 Registered Owner, 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, and each successive Registered Owner 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 Series 2000 A Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2000 A Bonds shall be transferable only upon the books of the 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 Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, all 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 canceled by the Registrar. For every such exchange or transfer of Bonds, the 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 Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days 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.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2000 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the 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 proof of its ownership thereof and 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 Registrar may incur. All Bonds so surrendered shall be canceled by the 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 2000 A 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. No Owner or Owners of any of the Series 2000 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2000 A Bonds or any interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2000 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System. Such Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2000 A Bonds and to make the

payments into all funds and accounts established by this Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Form of Bonds. The text of the Series 2000 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Bond Legislation or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof:

[The remainder of this page intentionally left blank.]

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF GARY  
WATER REVENUE BOND, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF GARY, a municipal corporation and political subdivision of the State of West Virginia in McDowell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The DWTRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH") and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, 200\_\_, by and between the Issuer and the Authority, on behalf of the BPH.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, \_\_\_\_\_, effective \_\_\_\_\_, \_\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, \_\_\_\_\_ (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, moneys in the Series 2000 A Bonds Reserve Account created under the Bond Legislation for the Bonds and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and 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, if any, hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on the Bonds payable in any year and all other obligations on a parity with the Bonds; provided however, that so long as there exists in the Series 2000 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in any year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount 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 \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (the "Registrar"), by the Registered Owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance hereof 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 upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the CITY OF GARY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10)\$		(28) \$	
(11)\$		(29) \$	
(12)\$		(30) \$	
(13)\$		(31) \$	
(14)\$		(32) \$	
(15)\$		(33) \$	
(16)\$		(34) \$	
(17)\$		(35) \$	
(18)\$		(36) \$	

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

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.10. Sale of Bonds; Authorization and Execution of Loan Agreement.

The Series 2000 A 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 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. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and specifically incorporated into this Bond Legislation.

Section 3.11. Amended Schedule B Filing. Upon completion of acquisition and construction of the Project, the Issuer shall promptly file with the Authority and the BPH a schedule, the form of which shall be provided by the BPH, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV

[Reserved]

## ARTICLE V

### 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:

- (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 and shall be held by the Commission:

- (1) Series 2000 A Bonds Sinking Fund; and
- (2) Within the Series 2000 A Bonds Sinking Fund, the Series 2000 A 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. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

- (1) The Issuer shall first, on the first day of each month, commencing 4 months prior to the first date of payment of principal of the Series 2000 A Bonds, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 2000 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2000 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2000 A Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, commencing 4 months prior to the first date of payment of principal of the Series 2000 A Bonds, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 2000 A Bonds Reserve Account, an amount equal to 1/120 of the Series 2000 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2000 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2000 A Bonds Reserve Requirement.

(3) The Issuer shall next, each month, pay from the Revenue Fund, all current Operating Expenses of the System.

(4) The Issuer shall next, each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount 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, repairs, improvements or extensions to the System; provided that, any deficiencies in any reserve account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2000 A Bonds Sinking Fund shall be used only for the purpose of paying principal of and interest, if any, on the Series 2000 A Bonds as the same shall become due. Moneys in the Series 2000 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2000 A Bonds as the same shall come due, when moneys in the Series 2000 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2000 A Bonds Reserve Account (if fully funded) shall be transferred, not less than once each year, to the Bond Construction Trust Fund during construction of the Project and thereafter, to the Series 2000 A Bonds Sinking Fund.

Any withdrawals from the Series 2000 A Bonds Reserve Account which result in a reduction in the balance of such account to an amount below the Series 2000 A Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2000 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay any interest on such additional Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2000 A Bonds Sinking Fund and the Series 2000 A Bonds Reserve Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority, the Issuer shall make the necessary arrangements whereby required payments into the Series 2000 A Bonds Sinking Fund and the Series 2000 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

Moneys in the Series 2000 A Bonds Sinking Fund and Series 2000 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

The Series 2000 A Bonds Sinking Fund and the Series 2000 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2000 A Bonds Outstanding under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve payments, 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.

C. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), commencing with the payment set forth in Section 5.03.A.(1) hereof, remit to the Commission the DWTRF Administrative Fee set forth in the Schedule Y attached to the Loan Agreement.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

E. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so

transferred and paid into such funds during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

F. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges then due. If required by the Authority, the Issuer shall make the necessary arrangements whereby payments to the Commission under this paragraph shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

H. 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.

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

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

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

## ARTICLE VI

### APPLICATION OF BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Series 2000 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2000 A Bonds, there shall be deposited with the Commission in the Series 2000 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution.

B. The remaining moneys derived from the sale of the Series 2000 A Bonds shall be deposited by the Issuer, as received from time to time, in the Bond Construction Trust Fund and shall be used solely to pay costs of the Project and until so expended, are hereby pledged as additional security for the Series 2000 A Bonds.

C. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2000 A Bonds shall be used as directed by the Authority and the BPH.

Section 6.02. Disbursements from Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2000 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the BPH of the following:

- (1) A "Payment Requisition Form," in the form attached to the Loan Agreement, in compliance with the construction schedule, and
- (2) A certificate, signed by the Mayor and the Consulting Engineers, stating that:

(A) None of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) 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) Each of such costs has been otherwise properly incurred; and

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

Pending such application, moneys in the Bond Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions set forth in 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 2000 A 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 2000 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of Series 2000 A Bonds, or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2000 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2000 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2000 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2000 A Bonds shall be secured by a first lien on the Gross Revenues derived from the operation of the System. The Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2000 A Bonds and to make the payments into all funds and accounts and all other payments provided for in this Bond Legislation, are hereby irrevocably pledged to the payment of the principal of and interest, if any, on the Series 2000 A Bonds and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the rate ordinance of the Issuer duly enacted on November 9, 1999.

The Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and in compliance with the requirements of the Loan Agreement. In the event the schedule of rates and charges initially

established for the System in connection with the Series 2000 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Series 2000 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the BPH, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay or redeem at or prior to maturity all the Bonds then Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate sinking funds, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and any interest, if any, on the Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission, unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$50,000, the Issuer shall, in writing, 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 derived from 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 \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, 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 the Governing Body may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds derived from any such sale shall be deposited in the Renewal and Replacement Fund.

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 \$200,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. Except additional Parity Bonds provided for in Section 7.07 hereof, 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 2000 A Bonds. All obligations hereafter issued by the Issuer 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 2000 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional Parity Bonds, being on a parity with the lien of the Series 2000 A Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2000 A Bonds and the interest, if any, thereon in this Bond Legislation or upon the System or any part thereof.

The Issuer shall give the Authority and the BPH 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 for the System, 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 and with the prior written consent of the BPH and the Authority.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2000 A Bonds.

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

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

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

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

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2000 A Bonds and the Holders of any Parity Bonds

subsequently issued, from time to time, within the limitations of and in compliance with this Section. All the Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their respective liens on the revenues of the System and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such additional 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 lien of the Series 2000 A 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 2000 A Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation on account of the Series 2000 A Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 7.08. Books, Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the BPH, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System, at all reasonable times, for the purpose of audit and examination. The Issuer shall submit to the Authority and the BPH such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any State and federal grants or other sources of financing for the Project.

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to the 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 in accordance with the rules and regulations of the PSC and the Bond Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer.

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

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds or other obligations Outstanding and secured by a lien on the Gross Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, 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 2000 A Bonds, and shall submit said report to the Authority and the BPH. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the Gross Revenues are adequate to meet the Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in

accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

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

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

Section 7.09. Rates. Prior to issuance of the Series 2000 A Bonds, equitable rates or charges for the use of and service rendered by the System will be established 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 the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates, at such times and with such provisions with respect to interest rate and maturity of the Series 2000 A Bonds, to finance the issuance of the Series 2000 A Bonds as the purchasers thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all Operating Expenses and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest, if any, on the Series 2000 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2000 A Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the Series 2000 A Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2000 A Bonds, are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest, if any, on the Series 2000 A Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall, annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the BPH within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made, except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority or 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.

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

Section 7.11. Certificate of Consulting Engineers: Engineering Services. Prior to or on the date of issuance of the Series 2000 A Bonds, the Issuer shall obtain the certificate of the Consulting Engineers, in the form attached to the Loan Agreement, certifying that the Project has been designed as provided in the Program application and will be constructed in accordance with the approved plans, specifications and design as submitted to the BPH, the Project will be adequate for the purposes for which it was designed, the funding plan as submitted to the BPH is sufficient to pay the costs of the acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the BPH 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. Such engineer shall certify to the Authority, the BPH and the Issuer, at the

completion of construction of the Project, that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit "as-built plans" to it within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit a final Operation and Maintenance Manual, in the form requested by the BPH, to the BPH when the Project is 90% completed. The Issuer shall, at all times, provide operation and maintenance of the System in compliance with any and all State and federal standards. The Issuer shall employ qualified operating personnel, properly certified by the State, before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent allowable by law, 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, rates, 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, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State or the rules and regulations of the PSC.

Whenever any fees, rates, rentals or other charges for the services or facilities of the System shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and any rules and regulations promulgated by the PSC applicable thereto, fees, 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 any rules and regulations promulgated by the PSC applicable thereto, discontinue and shut off the services and facilities of the System to all delinquent users of the services and facilities of the System, and will not restore such services of the System until all delinquent charges for the services and facilities 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 its 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 himself or herself 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. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service. 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. The Issuer shall carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks, so long as the Series 2000 A Bonds are outstanding. The Issuer shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and the BPH, and shall verify such insurance prior to commencement of construction. The Issuer shall itself, or shall require each contractor and subcontractor to, obtain and 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 Issuer, the Authority, the prime contractor and all subcontractors, as their interests may appear, in accordance with the Loan Agreement, until the Project is completed and accepted by the Issuer. In time of war, the Issuer shall also carry in said amount 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 disposed of as provided in the Bond Legislation and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer shall also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority and the BPH and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the PSC, 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 hereby covenants and agrees to complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all applicable laws, rules and regulations issued by the BPH, 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.

The Issuer has obtained all permits and approvals required by State and federal laws necessary for the acquisition and construction of the Project and all requisite orders and approvals from the PSC and the Infrastructure Council necessary for the acquisition and construction of the Project, the operation of the System and the issuance of the Series 2000 A Bonds, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance With Loan Agreement and Law. The Issuer hereby covenants and agrees to comply with, perform and satisfy all terms and conditions of the Loan Agreement, this Bond Legislation and the Act and to comply with all applicable laws, rules and regulations issued by the Authority, the BPH or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System. Notwithstanding anything herein to the contrary, the Issuer will provide the BPH with copies of all documents submitted to the Authority.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Bond Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Series 2000 A Bonds and shall be for the benefit of all Holders of the Series 2000 A Bonds.

Section 7.20. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 7.21. Contracts; Public Releases. The Issuer shall, simultaneously with the delivery of the Series 2000 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

The Issuer shall submit all proposed change orders to the BPH for written approval. The Issuer shall obtain the written approval of the BPH before expending any proceeds of the Series 2000 A Bonds held in "contingency" as set forth in the Schedule B attached to the Certificate of Consulting Engineer. The Issuer shall also obtain the written

approval of the BPH before expending any proceeds of the Series 2000 A Bonds made available due to bid or construction or project underruns.

The Issuer shall list the funding provided by the BPH and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

Section 7.22. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.23. Covenant to Amend Bond Legislation. The Issuer retains the right to make any amendments to or insertions or deletions from this Bond Legislation by a further amendatory ordinance or by the Supplemental Resolution as the Issuer deems necessary prior to the issuance of the Series 2000 A Bonds to meet the requirements of the Authority and the BPH.

## ARTICLE VIII

### INVESTMENT OF FUNDS

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 direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein and the specified 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. The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank may make any and all investments permitted by this section through its own trust 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 requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall furnish the Authority with information relating to the earnings on and the use of the proceeds of the Series 2000 A Bonds as may be requested by the Authority.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2000 A Bonds as a condition to issuance of the Series 2000 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2000 A Bonds as may be necessary in order to maintain the status of the Series 2000 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2000 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the BPH, as the case may be, from which the proceeds of the Series 2000 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the BPH, to ensure compliance with the covenants and agreements set forth in this Section 8.02, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2000 A Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2000 A Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2000 A Bonds set forth in this Bond Legislation, any supplemental resolution, or in the Series 2000 A 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 or any bank or banking association holding any fund or account hereunder or a Holder of the Series 2000 A Bonds; or

(C) 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 with respect to the Series 2000 A Bonds, any Registered Owner of such 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 such 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 such Bonds, and (v) by action or bill in equity, enjoin any acts in violation of the Bond Legislation with respect to such Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including the completion of the Project, 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, any Bondholder shall, in addition to all other remedies or rights, have the right, by appropriate legal proceedings, to obtain the appointment of a receiver to administer the System 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 the Series 2000 A Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate, 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 Series 2000 A Bonds and interest thereon and under any covenants of the 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, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Series 2000 A 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 and the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and Bondholders, and the curing and making good of any default under the provisions of the 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, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of the Series 2000 A Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in the Bond Legislation, then the pledge of Gross Revenues and any other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Modification or Amendment. Prior to the issuance of the Series 2000 A Bonds, this Bond Legislation may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2000 A Bonds, no material modification or amendment of this Bond Legislation or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the Registered Owners of the Series 2000 A Bonds then Outstanding and to be affected by said modification; provided however, that no change shall be made in the maturity of the Series 2000 A Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of the Series 2000 A Bonds required for consent to the above permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of this Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2000 A Bonds and no change, variation or alteration of any kind of the provisions of this 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 Bond Legislation 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 Bond Legislation, the Supplemental Resolution and the Series 2000 A 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, resolutions and orders, or parts thereof, in conflict with this Bond Legislation are, to the extent of such conflict, repealed.

Section 11.06. Covenant of Due Procedure. 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 final enactment and passage of this Bond Legislation do exist, have happened, have been performed and have been taken in regular and due time, form and manner

as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body were at all times when any actions in connection with this Bond Legislation occurred, and are, duly in office and duly qualified for such office.

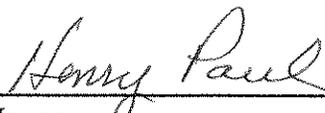
Section 11.07. Statutory Notice of Public Hearing. Upon adoption hereof, the abstract of this Bond Legislation in the form set forth in Exhibit B attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least six full days intervening between each publication, in the Welch Daily News, a newspaper of general circulation in the Issuer, there being no newspaper published therein, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Series 2000 A Bonds, and that any person interested may appear before the Issuer upon a certain date, 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 this Bond Legislation is on file with the Issuer for review by interested persons during office hours of the Issuer. The Governing Body hereby determines that the Abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Issuer shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Bond Legislation shall take effect immediately following the public hearing and final reading hereof.

First Reading: May 23, 2000

Second Reading: June 6, 2000

Public Hearing  
and Third Reading: July 11, 2000

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Bond Ordinance duly enacted by the Council of the City of Gary on July 11, 2000.

Dated this 1<sup>st</sup> day of August, 2000.

  
Recorder

[SEAL]

07/14/00  
009056/00301

## EXHIBIT A

### PROJECT DESCRIPTION

The Project consists of rebuilding two filters, adding chemical feed systems, constructing new tray aerators, installing two high service pumps, two backwash pumps and related improvements, making improvements to the storage system by rehabilitating two 300,000 gallon tanks and one 100,000 gallon tank, constructing three booster stations and one raw water pump station, making improvements to the distribution system consisting of approximately 29,000 feet of 12-inch pipe, 10,700 feet of 8-inch pipe, 11,600 feet of 6-inch pipe, 1,200 feet of 2-inch pipe and related appurtenances.

## EXHIBIT B

### CITY OF GARY, WEST VIRGINIA

#### NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on June 6, 2000, the Council of the City of Gary, West Virginia (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the Issuer's existing waterworks system (the "System") and the financing of the cost thereof, not otherwise provided, through the issuance of not more than \$2,000,000 in aggregate principal amount of Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) (the "Bonds"). The Project, estimated at \$4,400,000, was authorized to be financed with proceeds of the Bonds and grants from the United States Department of Housing and Urban Development (Small Cities Block Grant) in the amount of approximately \$1,400,000 and from the Appalachian Regional Commission in the amount of \$1,000,000.

2. Directed that the Bonds be issued in such principal amounts, bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the creation of a Revenue Fund and the disposition of the revenues of the System; provided for the payment of operating expenses; provided for the monthly

payment of principal of and interest, if any, on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not 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 of the System; pledged the Gross Revenues of the System to payment of the Bonds and established the rights of the holders of the Bonds to the Gross Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Bondholders.

9. Established the events of default and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of Gary at a regular meeting on July 11, 2000, at 6:00 p.m., in the Council Chambers, City Hall, Gary, West Virginia, and present protests and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

---

Recorder -- City of Gary, West Virginia



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF GARY WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM); AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of Gary (the "Issuer") has duly and officially passed a Bond Ordinance on June 6, 2000, effective July 11, 2000 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE CITY OF GARY; AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,000,000, TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; 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; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the Issuer, in an aggregate principal amount not to exceed \$2,000,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds, including all schedules and exhibits attached thereto (collectively, the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), all in accordance with Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, 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, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARY, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in the Welch Daily News, a qualified newspaper of general circulation in the Issuer with the first publication thereof being not less than ten (10) days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and

with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, Gary, West Virginia, on July 11, 2000, at 6:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. 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 2000 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the original principal amount of \$1,786,911. The Bonds shall be dated the date of delivery, shall finally mature September 1, 2031, shall bear no interest. The principal of the Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2001, in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the 0.5% DWTRF Administrative Fee set forth in the "Schedule Y" attached to the Loan Agreement. The Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of a redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, 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, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the Application to the BPH and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer hereby appoints and designates One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer hereby appoints and designates Ameribank, Welch, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Bond Construction Trust Fund, as received from time to time for payment of costs of the Project, including costs of issuance of the Bonds.

Section 9. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about August 1, 2000.

Section 10. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

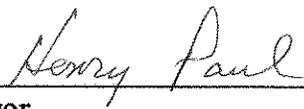
Section 11. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2000 A Bonds Sinking

Section 12. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 11<sup>th</sup> day of July, 2000.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Gary on the 11<sup>th</sup> day of July, 2000.

Dated this 1<sup>st</sup> day of August, 2000.

[SEAL]

  
Recorder

06/30/00  
009056/00301

*City of Gary  
Council Meeting  
May 23, 2000*

Attendance

Beth Lewis, Bond Council for Water Project  
Edward Wade, Council  
Randall David, Council  
Bobbie Orr, Council  
William Smith, Council  
Leodis Cloyd, Council  
Henry Paul, Mayor  
Lawrence Barber, Recorder

Public

Robert Blair

Meeting

Mayor Paul called the meeting to order.

Mr. Wade gave the prayer.

Robert Blair was present from the public but had nothing to add to the council meeting.

Mr. Smith made a motion to accept the minutes of the regular council meeting, Mrs. Orr seconded the motion, and all were in favor.

Mrs. Orr made a motion to accept the financial report, Mr. Wade seconded the motion, and all were in favor.

Mayor Paul talked about Jay Rhodes trying to obtain property for the City of Gary in the Wilcoe area but is still tied up with the bankruptcy court and also the City of Gary may get the property around/below the football field area.

Mayor Paul asked council to up the price of traffic violations in the city including speeding violations. Mr. Smith made a motion, Mrs. Orr seconded the motion, and all were in favor of increasing the fines for traffic violations. The price set by council is \$100 for the traffic violation. The second reading of the this new fee increase was taken on this night May 23, 2000. The third and final reading will be taken on June 6, 2000 at the regular council meeting. Mayor Paul made the second reading and there were no comments from council.

Mayor Paul then turned the meeting over to Lawrence Barber, City Recorder, in order to read the Form of Bond to the City Council members and then turned the meeting back over to Mayor Paul.

✓ Mayor Paul then did the first reading for the Bond Ordinance for the new water project. Mr. Smith made a

motion to accept the reading of the Bond Ordinance, Mr. Cloyd seconded the motion, and all were in favor. The second reading will be taken on June 6, 2000 at the regular council meeting and the third and final reading will be taken on July 11, 2000 and then there will be a public hearing on the matter.

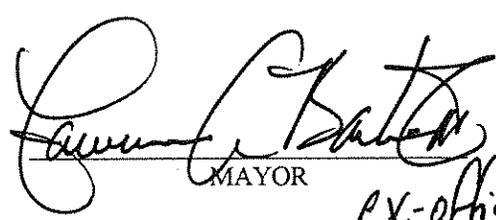
Mayor Paul then turned the meeting over to Beth Lewis, Bond Council for the new water project. Mrs. Lewis explained the Ordinance to the Council members and then talked about the \$250,000 shortage on the project. She said that there may be funds available from the Governor or other sources. Mrs. Lewis then turned the meeting over to Mayor Paul.

Mayor Paul asked Council if they had anything to add. No other council members had anything to add.

Meeting was then adjourned.

Attest:

  
RECORDER

  
MAYOR

ex-officio  
for Mayor  
Paul

*City of Gary  
Council Meeting  
June 6, 2000*

Attendance

Beth Lewis, Bond Council for Water Project  
Edward Wade, Council  
Randall David, Council  
Bobbie Orr, Council  
William Smith, Council  
Lawrence Barber, Recorder

Public

Robert Blair, Dolores Johnson, and Cliff Moore

Meeting

Recorder Lawrence Barber acted ex-officio for Mayor Henry Paul due to an illness to his wife.

Recorder Lawrence Barber called the meeting to order.

Mr. Wade gave the prayer.

Robert Blair was present from the public but had nothing to add to the council meeting. Dolores Johnson was present from the public but had nothing to add to the council meeting. Cliff Moore showed up at approximately 6:20 p.m. and talked to the council members about building a senior citizen housing project in Gary in the back alley area of Church Street and also known as the Main Office Yard. Lawrence Barber objected to the location of Mr. Moore's proposed housing project. Other council members commented on the project but did not give any indication whether they objected or supported the project. This was the first time that Mr. Moore officially approached City Council about this project.

Mrs. Orr made a motion to accept the minutes of the regular council meeting. Mr. Wade seconded the motion, and all were in favor.

Mr. David made a motion to accept the financial report. Mrs. Orr seconded the motion, and all were in favor.

Mr. Barber asked council to up the price of traffic violations in the city including speeding violations. Mr. Smith made a motion, Mrs. Orr seconded the motion, and all were in favor of increasing the fines for traffic violations. The price set by council is \$100 for the traffic violation. The second reading of the this new fee increase was taken on May 23, 2000. The third and final reading was taken on June 6, 2000 at the regular council meeting. Mr. Barber made the third reading and there were no comments from council.

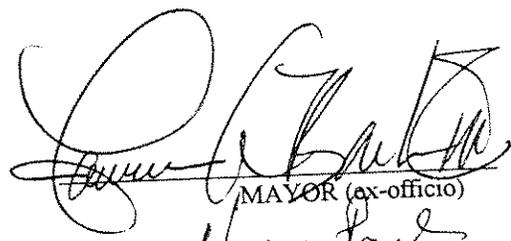
✓ Mr. Barber then turned the meeting over to Beth Lewis, Bond for the Water Project in order to read by title only the Form of Bond to the City Council members and she then turned the meeting back over to Mr. Barber.

The second reading was taken on June 6, 2000 at the regular council meeting, Mr. Smith made a motion to accept the second reading. Mrs. Orr seconded the motion and all were in favor. The third and final reading will be taken on July 11, 2000 and then there will be a public hearing on the matter.

Mr. Barber asked Council if they had anything to add. No other council members had anything to add.

Meeting was then adjourned.

Attest:   
RECORDER

  
MAYOR (ex-officio)  
Henry Paul *ex-officio*  
for  
Mayor  
Henry Paul

*City of Gary  
Council Meeting  
July 11, 2000*

Attendance

Beth Lewis, Bond Council for Water Project  
Edward Wade, Council  
Randall David, Council  
Bobbie Orr, Council  
William Smith, Council  
Leodis Cloyd, Council  
Mayor Henry Paul  
Lawrence Barber, Recorder

Public

Robert Blair and Cliff Moore

Meeting

Mayor Paul called the meeting to order.

Mr. Wade gave the prayer.

Robert Blair was present from the public but had nothing to add to the council meeting. Cliff Moore was present at the meeting and said that had did not have any further information about the proposed elderly housing project which is supposed to be built in the Main Office lawn area.

✓ Mayor Paul then turned the meeting over to Beth Lewis. Mrs. Lewis announced that the public is welcome for comments about the Bond on the water project. There were no comments from the public and Mrs. Lewis continued by making the 3rd and final reading. Mrs. Lewis also informed the council that the interest rate has been lowered from 1% to .5%. There were no questions from council and Mrs. Lewis asked for a motion for a resolution to pass the bond for the water project. Mr. Smith made a motion, Mrs. Orr seconded the motion, and all were in favor. Mrs. Lewis then read by title only the supplemental resolution for the bond on the water project and asked for a motion from council. Mr. Smith made a motion, Mrs. Orr seconded the motion, and all were in favor. Mrs. Lewis then talked about fees. Mrs. Lewis said that the fees need to be capped off at \$15,000 which the fees have actually exceeded \$18,000. Region I budgeted \$15,000 into the budgeted amount. Mrs. Lewis asked for a motion for the raising of the fees. Mr. David made a motion, Mr. Smith seconded the motion and all were in favor.

Council then went into recess in order for Mayor Paul and Recorder Barber to sign papers dealing with the bond issue of the water project.

Mr. Smith made a motion to accept the minutes of the regular council meeting, Mrs. Orr seconded the motion, and all were in favor.

Mrs. Orr made a motion to accept the financial report, Mr. Smith seconded the motion, and all were in favor.

Mr. David asked about putting a stop sign at the entrance of Number 10 hill above the Nursing Home. Mayor Paul commented that the city could not do anything but the State Department of Highways could put a sign there.

No other council members had anything to add.

Mayor Paul asked council for a motion for the City to use the State of West Virginia Department of Motor Vehicle Codes on Fines and Regulations. Mr. David made a motion, Mrs. Orr seconded the motion, and all were in favor.

Mayor Paul then turned the meeting over to Mr. Barber. Mr. Barber talked to council about Ralph Bassett, CPA performing the necessary duties in dealing with the Public Service Commission Reports for the City. Mr. Barber then turned the meeting back over to Mayor Paul.

Mayor Paul said that he met with Dean Upton and the closing on the water project is dated on August 1, 2000 and the awarding of contracts will be on August 1, 2000 also. Mayor Paul said that construction can start the next day being August 2, 2000 if they want to. Mayor Paul went on to say that the water project will be starting in a month and will finish sometime close to May 2001, however, the construction must start within 11 days of awarding the bids.

Mayor Paul asked Council if they had anything to add. No other council members had anything to add.

Meeting was then adjourned.

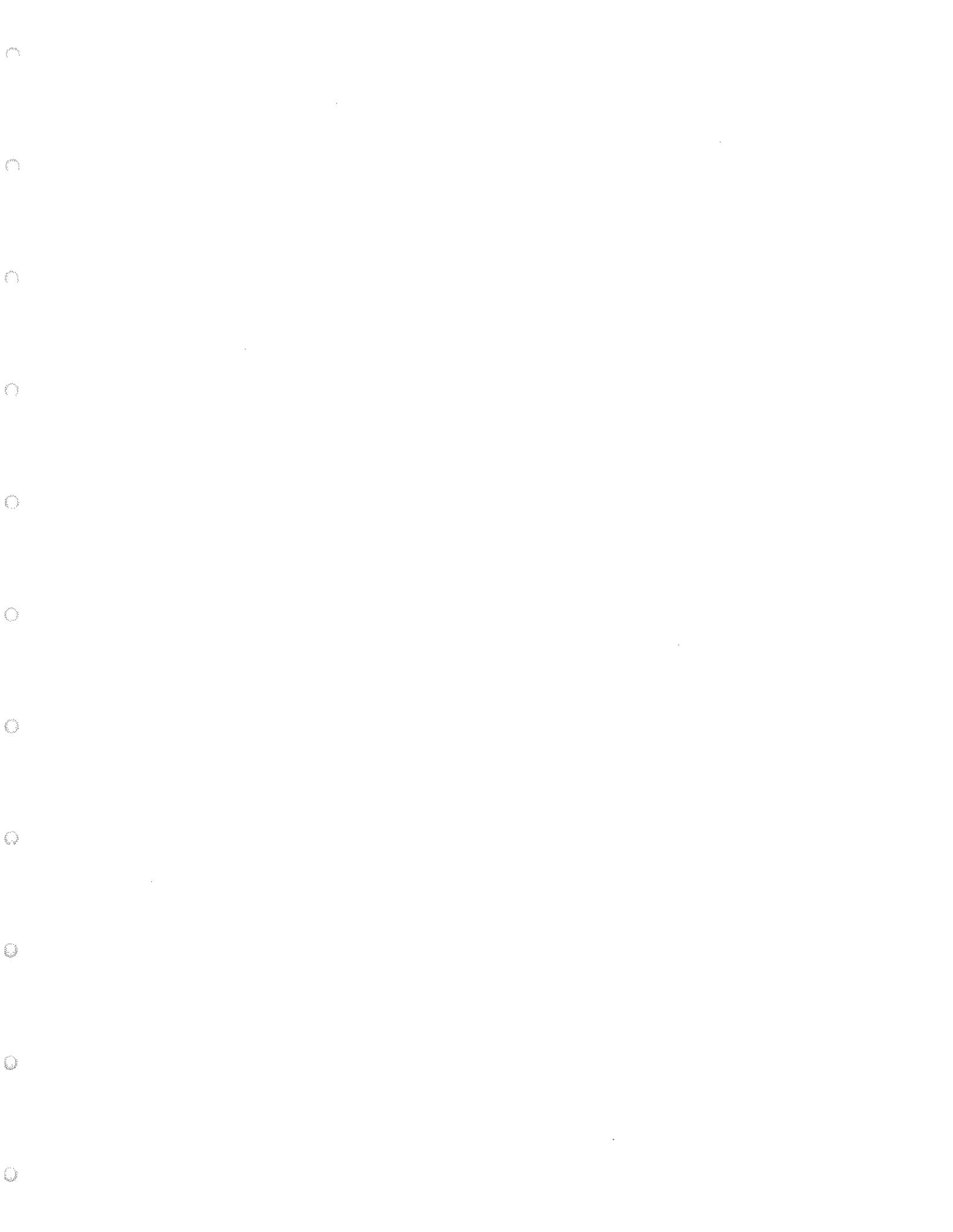
---

MAYOR

Attest:

---

RECORDER



**AFFIDAVIT OF PUBLICATION:**

State of West Virginia  
County of McDowell, to wit:

I, Irene Wooten, being first duly sworn upon my oath, do depose and say that I am the Legal Editor of the Welch Daily News, Inc., a corporation, publisher of the newspaper entitled **The Welch Daily News**, a Republican newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily except weekends and holidays, for at least fifty weeks during the calendar year, in the Municipality of Welch, McDowell County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and McDowell County, West Virginia; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of CITY OF GARY

JACKSON & KELLY PLLC

6000 HAMPTON CENTER

P.O. BOX 619

MORGANTOWN, WV 26607

was duly published in said newspaper once a week for 2 successive weeks, (Class II), commencing with the issue of the 26 day of JUNE, 1900, and ending with the issue of the 3 day of JULY, 1900 [and was posted at the (if required)

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_]; that said annexed notice was published on the following dates: JUNE 26, 00 & JULY 3, 00 and that the cost of publishing said annexed notice as aforesaid was \$ 72.27.

*Irene Wooten*

Irene Wooten, Legal Editor  
The Welch Daily News

Taken subscribed and sworn to before me in my said county this 13

day of JULY, 1900.

My Commission expires March 4, 2007.



OFFICIAL SEAL  
NOTARY PUBLIC  
STATE OF WEST VIRGINIA  
TAMMY E. HOPKINS  
P. O. BOX 772  
GARY, WV 24836

My Commission Expires March 4, 2007

*Tammy E. Hopkins*  
Notary Public, State of West Virginia

**LEGAL NOTICE**

**CITY OF GARY, WEST VIRGINIA  
NOTICE OF PUBLIC HEARING AND ABSTRACT  
OF BOND ORDINANCE**

Notice is hereby given to any person interested that on June 6, 2000, the Council of the City of Gary, West Virginia (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the Issuer's existing waterworks system, (the "System") and the financing of the cost thereof, not otherwise provided, through the issuance of not more than \$2,000,000 in aggregate principal amount of Water Revenue Bonds, Series 2000 A (West Virginia DW:RF Program) (the "Bonds"). The Project, estimated at \$4,400,000, was authorized to be financed with proceeds of the Bonds and grants from the United States Department of Housing and Urban Development (Small Cities Block Grant) in the amount of approximately \$1,400,000 and from the Appalachian Regional Commission in the amount of \$1,000,000.

2. Directed that the Bonds be issued in such principal amounts, bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the creation of a Revenue fund and the disposition of the revenues of the System, provided for the payment of operating expenses; provided for the monthly payment of principal of and interest, if any, on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not be or constitute and indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues of the System; pledged the Gross Revenues of the System to payment of the Bonds and established the rights of the holders of the Bonds to the Gross Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Bondholders.

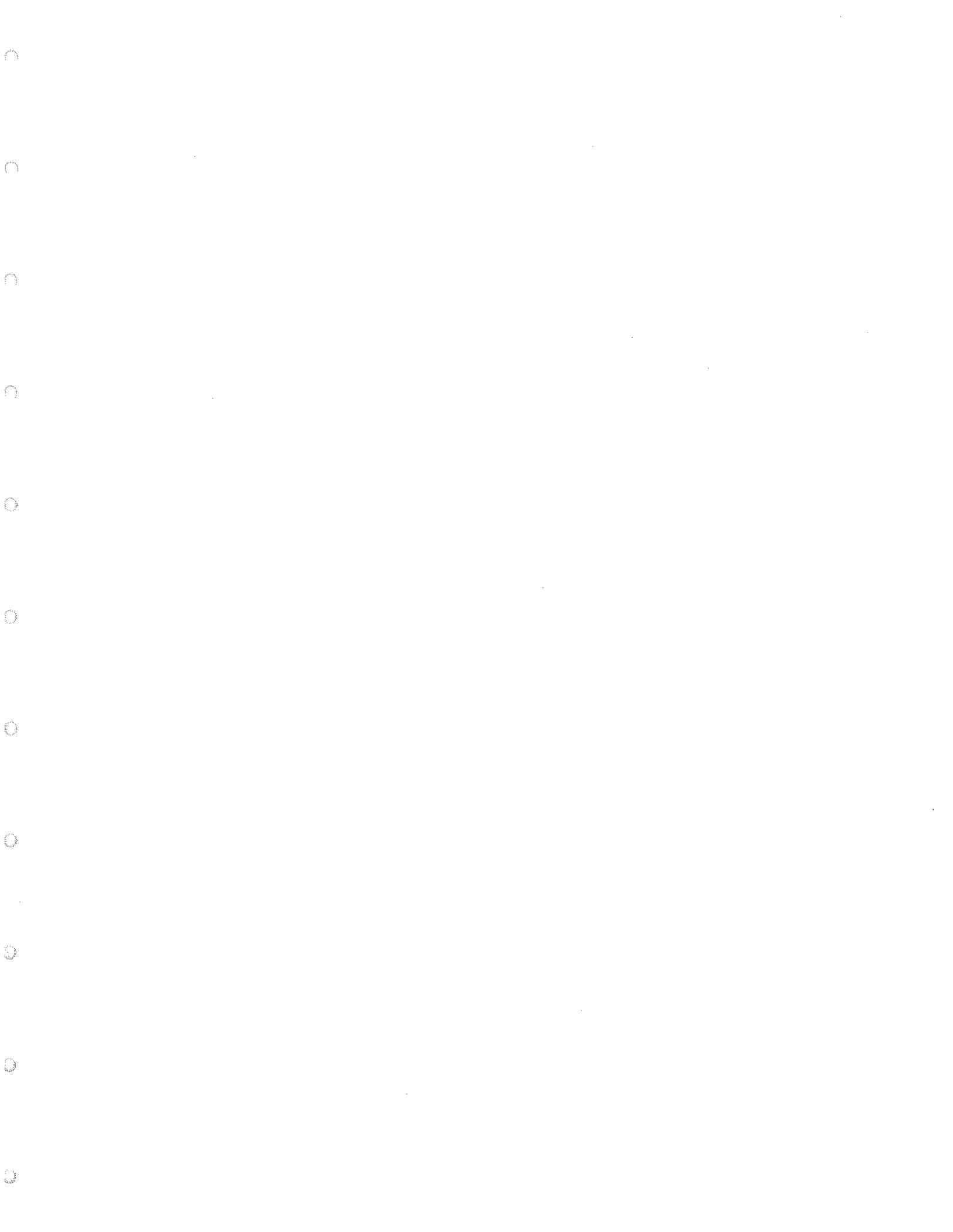
9. Established the events of default and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of Gary at a regular meeting on July 11, 2000, at 6:00 p.m., in the Council Chambers, City Hall, Gary, West Virginia, and present protests and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

Lawrence Barber, III  
Recorder-City of Gary, West Virginia  
6/26/3/2TC



AR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF GARY  
WATER REVENUE BOND, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$1,786,911

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF GARY, a municipal corporation and political subdivision of the State of West Virginia in McDowell 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 ONE MILLION SEVEN HUNDRED EIGHTY SIX THOUSAND NINE HUNDRED ELEVEN DOLLARS (\$1,786,911), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2001, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The DWTRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2001, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH") and as otherwise provided by the Loan Agreement dated July 11, 2000, by and between the Issuer and the Authority, on behalf of the BPH.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on June 6, 2000, effective July 11, 2000, and a Supplemental Resolution duly adopted by the Issuer on July 11, 2000 (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, moneys in the Series 2000 A Bonds Reserve Account created under the Bond Legislation for the Bonds and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and 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, if any, hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on the Bonds payable in any year and all other obligations on a parity with the Bonds; provided however, that so long as there exists in the Series 2000 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in any year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount 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 One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), by the Registered Owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance hereof 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 upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the CITY OF GARY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated August 1, 2000.

[SEAL]

Henry Paul  
Mayor

ATTEST:

Lawrence R. Barber III  
Recorder

**SPECIMEN**

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: August 1, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By *Charlette S. Morgan*  
Its Authorized Officer

SPECIMEN

EXHIBIT A

RECORD OF ADVANCES

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$44,673	8/1/00	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10)\$		(28) \$	
(11)\$		(29) \$	
(12)\$		(30) \$	
(13)\$		(31) \$	
(14)\$		(32) \$	
(15)\$		(33) \$	
(16)\$		(34) \$	
(17)\$		(35) \$	
(18)\$		(36) \$	

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

EXHIBIT B

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	-	-	-
6/01/2001	-	-	-
9/01/2001	-	-	-
12/01/2001	14,891.00	-	14,891.00
3/01/2002	14,891.00	-	14,891.00
6/01/2002	14,891.00	-	14,891.00
9/01/2002	14,891.00	-	14,891.00
12/01/2002	14,891.00	-	14,891.00
3/01/2003	14,891.00	-	14,891.00
6/01/2003	14,891.00	-	14,891.00
9/01/2003	14,891.00	-	14,891.00
12/01/2003	14,891.00	-	14,891.00
3/01/2004	14,891.00	-	14,891.00
6/01/2004	14,891.00	-	14,891.00
9/01/2004	14,891.00	-	14,891.00
12/01/2004	14,891.00	-	14,891.00
3/01/2005	14,891.00	-	14,891.00
6/01/2005	14,891.00	-	14,891.00
9/01/2005	14,891.00	-	14,891.00
12/01/2005	14,891.00	-	14,891.00
3/01/2006	14,891.00	-	14,891.00
6/01/2006	14,891.00	-	14,891.00
9/01/2006	14,891.00	-	14,891.00
12/01/2006	14,891.00	-	14,891.00
3/01/2007	14,891.00	-	14,891.00
6/01/2007	14,891.00	-	14,891.00
9/01/2007	14,891.00	-	14,891.00
12/01/2007	14,891.00	-	14,891.00
3/01/2008	14,891.00	-	14,891.00
6/01/2008	14,891.00	-	14,891.00
9/01/2008	14,891.00	-	14,891.00
12/01/2008	14,891.00	-	14,891.00
3/01/2009	14,891.00	-	14,891.00
6/01/2009	14,891.00	-	14,891.00
9/01/2009	14,891.00	-	14,891.00
12/01/2009	14,891.00	-	14,891.00
3/01/2010	14,891.00	-	14,891.00
6/01/2010	14,891.00	-	14,891.00
9/01/2010	14,891.00	-	14,891.00
12/01/2010	14,891.00	-	14,891.00
3/01/2011	14,891.00	-	14,891.00
6/01/2011	14,891.00	-	14,891.00
9/01/2011	14,891.00	-	14,891.00
12/01/2011	14,891.00	-	14,891.00

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
3/01/2012	14,891.00	-	14,891.00
6/01/2012	14,891.00	-	14,891.00
9/01/2012	14,891.00	-	14,891.00
12/01/2012	14,891.00	-	14,891.00
3/01/2013	14,891.00	-	14,891.00
6/01/2013	14,891.00	-	14,891.00
9/01/2013	14,891.00	-	14,891.00
12/01/2013	14,891.00	-	14,891.00
3/01/2014	14,891.00	-	14,891.00
6/01/2014	14,891.00	-	14,891.00
9/01/2014	14,891.00	-	14,891.00
12/01/2014	14,891.00	-	14,891.00
3/01/2015	14,891.00	-	14,891.00
6/01/2015	14,891.00	-	14,891.00
9/01/2015	14,891.00	-	14,891.00
12/01/2015	14,891.00	-	14,891.00
3/01/2016	14,891.00	-	14,891.00
6/01/2016	14,891.00	-	14,891.00
9/01/2016	14,891.00	-	14,891.00
12/01/2016	14,891.00	-	14,891.00
3/01/2017	14,891.00	-	14,891.00
6/01/2017	14,891.00	-	14,891.00
9/01/2017	14,891.00	-	14,891.00
12/01/2017	14,891.00	-	14,891.00
3/01/2018	14,891.00	-	14,891.00
6/01/2018	14,891.00	-	14,891.00
9/01/2018	14,891.00	-	14,891.00
12/01/2018	14,891.00	-	14,891.00
3/01/2019	14,891.00	-	14,891.00
6/01/2019	14,891.00	-	14,891.00
9/01/2019	14,891.00	-	14,891.00
12/01/2019	14,891.00	-	14,891.00
3/01/2020	14,891.00	-	14,891.00
6/01/2020	14,891.00	-	14,891.00
9/01/2020	14,891.00	-	14,891.00
12/01/2020	14,891.00	-	14,891.00
3/01/2021	14,891.00	-	14,891.00
6/01/2021	14,891.00	-	14,891.00
9/01/2021	14,891.00	-	14,891.00
12/01/2021	14,891.00	-	14,891.00
3/01/2022	14,891.00	-	14,891.00
6/01/2022	14,891.00	-	14,891.00
9/01/2022	14,891.00	-	14,891.00
12/01/2022	14,891.00	-	14,891.00
3/01/2023	14,891.00	-	14,891.00
6/01/2023	14,891.00	-	14,891.00

**City of Gary (West Virginia)**  
*DWTRF Loan of \$1,786,911*  
*30 Years, 0% Interest Rate, 0.5% Administrative Fee*  
*Closing Date: August 1, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
9/01/2023	14,891.00	-	14,891.00
12/01/2023	14,891.00	-	14,891.00
3/01/2024	14,891.00	-	14,891.00
6/01/2024	14,891.00	-	14,891.00
9/01/2024	14,891.00	-	14,891.00
12/01/2024	14,891.00	-	14,891.00
3/01/2025	14,891.00	-	14,891.00
6/01/2025	14,891.00	-	14,891.00
9/01/2025	14,891.00	-	14,891.00
12/01/2025	14,891.00	-	14,891.00
3/01/2026	14,891.00	-	14,891.00
6/01/2026	14,891.00	-	14,891.00
9/01/2026	14,891.00	-	14,891.00
12/01/2026	14,891.00	-	14,891.00
3/01/2027	14,891.00	-	14,891.00
6/01/2027	14,891.00	-	14,891.00
9/01/2027	14,891.00	-	14,891.00
12/01/2027	14,891.00	-	14,891.00
3/01/2028	14,891.00	-	14,891.00
6/01/2028	14,891.00	-	14,891.00
9/01/2028	14,891.00	-	14,891.00
12/01/2028	14,891.00	-	14,891.00
3/01/2029	14,891.00	-	14,891.00
6/01/2029	14,891.00	-	14,891.00
9/01/2029	14,890.00	-	14,890.00
12/01/2029	14,890.00	-	14,890.00
3/01/2030	14,890.00	-	14,890.00
6/01/2030	14,890.00	-	14,890.00
9/01/2030	14,890.00	-	14,890.00
12/01/2030	14,890.00	-	14,890.00
3/01/2031	14,890.00	-	14,890.00
6/01/2031	14,890.00	-	14,890.00
9/01/2031	14,890.00	-	14,890.00
<b>Total</b>	<b>1,786,911.00</b>	<b>-</b>	<b>1,786,911.00 *</b>

\*Plus \$1,126.13 one-half percent administrative fee paid quarterly.  
 Total fee paid over the life of the loan is \$135,135.60.

AR-1

ASSIGNMENT

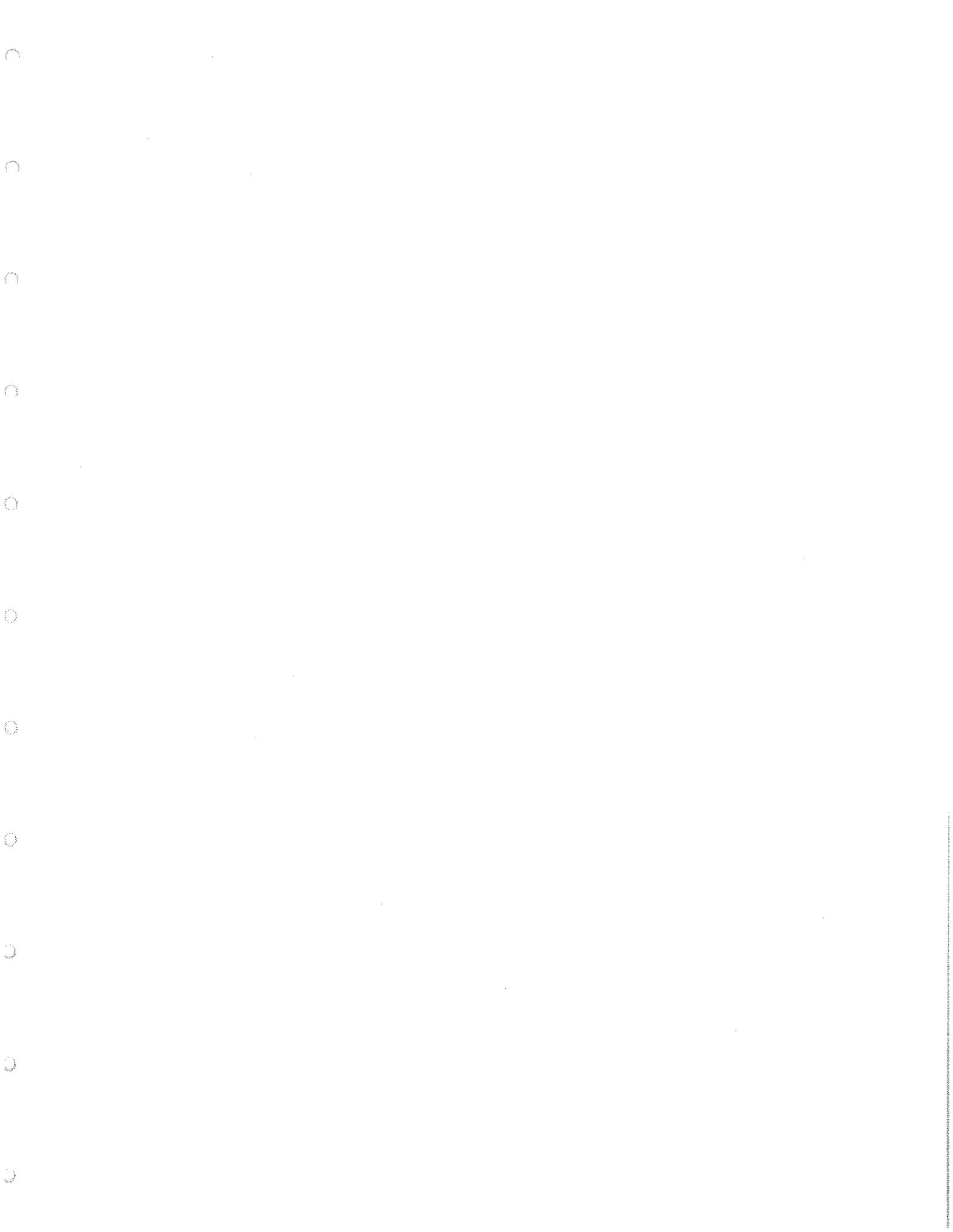
FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration thereof with full power  
of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. LOAN AGREEMENT
11. SPECIMEN BOND
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
14. LAND AND RIGHTS-OF-WAY
15. PUBLIC SERVICE COMMISSION ORDER
16. CONFLICTS OF INTEREST
17. VERIFICATION OF SCHEDULE B
18. SAFE DRINKING WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the City of Gary in McDowell County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), numbered AR-1, dated the date hereof, in the principal amount of \$1,786,911, bearing no interest and subject to the DWTRF Administrative Fee of 0.5% (the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on June 6, 2000, effective July 11, 2000, the Supplemental

Resolution duly adopted by the Issuer on July 11, 2000 (collectively, the "Ordinance"), and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health ("BPH"), dated July 11, 2000 (the "Loan Agreement").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Gross Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Council thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Gross Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the 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, execution and delivery by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

There are no outstanding bonds, notes or other obligations of the Issuer which are secured by a lien on the revenues of the System.

5. **SIGNATURES AND DELIVERY:** The undersigned Mayor and Recorder are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature; the undersigned Recorder did officially cause the

seal of the Issuer to be affixed upon the Bonds and to be attested by his or her 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.

6. RATES: The Issuer has duly enacted a water rate ordinance on November 9, 1999, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "City of Gary." The Issuer is a municipal corporation of the State of West Virginia in McDowell County of said State. The governing body of the Issuer is its Council, consisting of five Council members, the Mayor and the Recorder, all duly elected or appointed, qualified and acting, whose names and dates of commencement and termination of their current terms of office are listed below:

<u>Office</u>	<u>Name</u>	<u>Date Of Commencement Of Office</u>	<u>Date Of Termination Of Office</u>
Mayor	Henry Paul	July 1, 1999	June 30, 2003
Recorder	Lawrence Barber, III	July 1, 1999	June 30, 2003
Council Member	William Smith	July 1, 1999	June 30, 2003
Council Member	Edward Wade	July 1, 1999	June 30, 2003
Council Member	Leodis B. Cloyd	July 1, 1999	June 30, 2003
Council Member	Bobbie Orr	July 1, 1999	June 30, 2003
Council Member	James David	July 1, 1999	June 30, 2003

The duly appointed and acting Attorney for the Issuer is Rudolph J. Murensky, II, Esquire, Welch, West Virginia.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Council duly and regularly or specifically called and held pursuant to all applicable statutes including Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Council was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

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

10. 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 statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the 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 therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

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

12. BOND PROCEEDS: On the date hereof, the Issuer received \$44,673 from the Authority and the BPH, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Council 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 Welch Daily News, a qualified newspaper of general circulation in the Issuer, no newspaper being published therein, 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 the Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a regular meeting of Council on July 11, 2000, at 6:00 p.m., prevailing time, in the Council chambers of the City Hall in Gary, West Virginia, 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 Council 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.

14. **LAND AND RIGHTS-OF-WAY:** All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the 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.

15. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the PSC orders entered on January 18, 2000, and July 25, 2000, in Case No. 99-1308-W-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC Order entered January 18, 2000, has expired prior to the date hereof without any appeal. The time for appeal of the PSC order entered July 25, 2000, has not expired prior to the date hereof. However, the Issuer hereby states that it will not appeal such order and the other parties thereto have stated that they do not intend to appeal such order. Such order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to the original application.

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

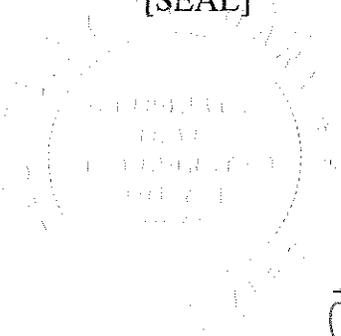
17. **VERIFICATION OF SCHEDULE B:** The final amended Schedule B attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds. The grants from the Appalachian Regional Commission in the amount of \$1,000,000 and the United States Department of Housing and Urban Development (Small Cities Block Grant through the State) in the amount of \$1,250,000 are committed and currently in full force and effect.

18. **SAFE DRINKING WATER ACT:** The Project as described in the Ordinance complies with the Safe Drinking Water Act.

19. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of the City of Gary,  
West Virginia, on this 1<sup>st</sup> day of August, 2000.

[SEAL]



Signature

Official Title

Henry Paul

Mayor

James C. Barrett

Recorder

Rudolph J. Murawski

Attorney

EXHIBIT A

See Specimen Bond (Tab No. 15)

07/21/00  
009056/00301



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor of the City of Gary in McDowell County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$1,786,911 Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the Issuer, dated August 1, 2000 (the "Bonds"), hereby certify as follows:

1. 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 duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance duly passed by the Issuer on June 6, 2000, effective July 11, 2000 (the "Bond Ordinance"), authorizing the Bonds.
2. This certificate may be relied upon as the certificate of the Issuer.
3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on August 1, 2000, the date on which the Bonds are being physically delivered in exchange for an initial advance of \$44,673, being a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.
4. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") or the West Virginia Bureau for Public Health (the "BPH") or the West Virginia Infrastructure and Jobs Development Council, as the case may be, from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Bonds were sold on August 1, 2000, to the Authority, pursuant to a loan agreement dated July 11, 2000, by and between the Issuer and the Authority, on behalf of the BPH, for an aggregate purchase price of \$1,786,911 (100% of par), at which time, the Issuer received \$44,673 from the Authority and the BPH, being the first advance of the principal amount of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend in excess of \$100,000 on the Project, constituting a substantial binding commitment. The acquisition and construction of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest, if any, and 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 August 1, 2001. The acquisition and construction of the Project is expected to be completed by August 1, 2001.

8. The total cost of the Project is estimated at \$4,036,911. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Bonds	\$1,786,911
Small Cities Block Grant	1,250,000
Appalachian Regional Commission Grant	<u>1,000,000</u>
Total Sources	<u>\$4,036,911</u>

USES

Costs of the Project	\$4,021,911
Capitalized Interest	-0-
Fund Reserve Account	-0-
Costs of Issuance	<u>15,000</u>
Total Uses	<u>\$4,036,911</u>

9. 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;
- (4) Series 2000 A Bonds Sinking Fund; and
- (5) Series 2000 A Bonds Reserve Account.

10. 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 2000 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Bonds during acquisition and construction of the Project and for a period not to exceed six months following completion thereof.

(2) Bond proceeds in the amount of \$-0- will be deposited in the Series 2000 A Bonds Reserve Account.

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

11. Moneys held in the Series 2000 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, 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 2000 A Bonds Sinking Fund and Series 2000 A 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.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2000 A Bonds Sinking Fund for payment of interest, if any, on the Bonds and the amount deposited in the Series 2000 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 12 months from the date of issuance thereof.

15. 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.

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

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

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

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

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain public purpose bonds.

23. The Issuer has either (a) funded the Series 2000 A 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 2000 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2000 A Bonds

Reserve Account hold 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 2000 A Bonds Reserve Account and the Series 2000 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

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

25. 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.

26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

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

WITNESS my signature on this 1<sup>st</sup> day of August, 2000.

CITY OF GARY

  
\_\_\_\_\_

Mayor

07/14/00  
009056/00301

M0319331.1



CITY OF GARY  
 WATER REVENUE BONDS, SERIES 2000 A  
 (WEST VIRGINIA DWTRF PROGRAM)

CERTIFICATE OF RECORDER AS TO TRUTH  
 AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected Recorder of the City of Gary, West Virginia (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of \$1,786,911 City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) (the "Bonds") are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Charter.
2. Oaths of Office of Mayor, Recorder and Council Members.
3. Rules of Procedure.
4. Public Service Commission Order.
5. Infrastructure Council Approval Letter.
6. Loan Agreement.
7. Rate Ordinance.
8. Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.
9. Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.

10. Bond Ordinance.
11. Supplemental Resolution.
12. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.
13. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.
14. Letter Evidencing Small Cities Block Grant.
15. Letter Evidencing Appalachian Regional Commission Grant.
16. Financing Statement and Certificate of Filing.

[The rest of this page is intentionally left blank.]

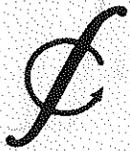
WITNESS my signature and the official seal of the City of Gary, West Virginia,  
on this 1<sup>st</sup> day of August, 2000.

  
Recorder

[SEAL]

07/20/00  
009065/00301





**STAFFORD  
CONSULTANTS  
INCORPORATED**

*Engineering, Design, and Consulting*

**CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)**

**CERTIFICATE OF CONSULTING ENGINEER**

We, Jack D. Stafford, Registered Professional Engineer, West Virginia License No. 6753 and C. Dean Upton, Registered Professional Engineer, West Virginia License No. 7829, of Stafford Consultants, Incorporated, Princeton, West Virginia, hereby certify as follows:

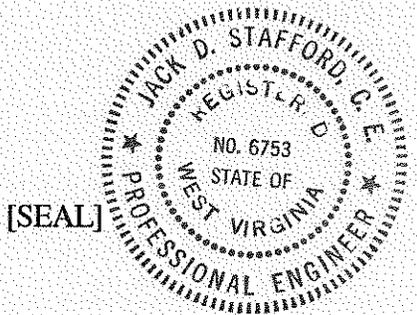
1. Stafford Consultants, Incorporated, is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing waterworks system (the "System") of the City of Gary, West Virginia (the "Issuer") to be constructed primarily in McDowell County, West Virginia, which acquisition and construction are being permanently financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on June 6, 2000, effective July 11, 2000, and the Loan Agreement dated July 11, 2000 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project, and (ii) paying certain issuance and other costs in connection therewith.

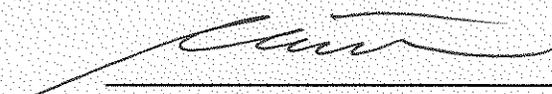
3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by Stafford Consultants, Incorporated, and approved by the BPH, and any change orders approved by the Issuer, the BPH, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and when constructed, in our profession opinion, has an anticipated useful life of at least thirty years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as EXHIBIT A; (iv) the successful

bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the BPH and the bid forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained the following permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System including: (a) Bureau of Public Health Permit, (b) West Virginia Division of Highways Permit, (c) Corps of Engineers Nationwide Permit #12, (d) Public Land Corporation License Agreement, (e) Department of Environmental Protection NPDES Permit, (f) Norfolk Southern Railway License Agreement, and, in our professional opinion, no other permits are required; (ix) the net proceeds of the Bonds, together with all moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefore, are sufficient to pay the costs of acquisition and construction of the Project approved by the BPH; and (x) attached hereto as EXHIBIT A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS our signatures and seals on this 1<sup>st</sup> day of August 2000.



STAFFORD CONSULTANTS, INCORPORATED

  
\_\_\_\_\_  
Jack D. Stafford, P.E.  
West Virginia License No. 6753



  
\_\_\_\_\_  
C. Dean Upton, P.E.  
West Virginia License No. 7829

Attachment

**WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

**SCHEDULE B  
City of Gary - Phase I  
Gary Regional Water**

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

<b>A. Cost of Project</b>	<b>Total</b>	<b>SCBG</b>	<b>ARC</b>	<b>DWTRF</b>
1. Construction (Based on Actual Bids)	\$3,310,344	\$917,740	\$763,773	\$1,628,831
2. Technical Services	\$438,840	\$262,760	\$46,000	\$130,080
3. Legal & Fiscal	\$16,500	\$3,500		\$13,000
4. Administrative	\$54,000	\$54,000		
5. Sites and Other Lands	\$12,000	\$12,000		
6. Step 1 or II or Other Loan Repayment				
7. Interim Financing Costs				
8. Contingency	\$190,227		\$190,227	
9. Total of Lines 1 through 8	\$4,021,911	\$1,250,000	\$1,000,000	\$1,771,911
<b>B. Sources of Funds</b>				
10. Federal Grants:				
a. ARC	\$1,000,000		\$1,000,000	
b.				
11. State Grants:				
a. SCBG	\$1,250,000	\$1,250,000		
b.				
12. Other Grants:				
13. Any Other Source: <sup>1</sup>				
a.				
b.				
14. Infrastructure Fund Grant				
15. Total of Lines 10 through 14	\$2,250,000	\$1,250,000	\$1,000,000	
16. Net Proceeds Required from Bond Issue (Line 9 minus Line 15)	\$1,771,911			\$1,771,911
<b>C. Cost of Financing</b>				
17. Funded Reserve Account <sup>2</sup>				
18. Other Costs <sup>3</sup>				
a. Bond Counsel	\$15,000			\$15,000
b.				
19. Total Cost of Financing (Lines 17 and 18)	\$15,000			\$15,000
20. Size of Bond Issue (Line 16 plus Line 19)	\$1,786,911			\$1,786,911

*Henry Paul*

CITY OF GARY

DATE: 7-11-00

*C. Dean Epton*

STAFFORD CONSULTANTS, INC.

DATE: 7-11-00

<sup>1</sup> Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation.

<sup>2</sup> Consult with bond counsel and the Council before assuming a funded reserve.

<sup>3</sup> For example, fees of accountants, bond counsel and local counsel for the Governmental Agency.



**Jeffrey S. Feamster, CPA**

Jeffrey S. Feamster  
Certified Public Accountant  
P.O. Box 121  
Lewisburg, West Virginia 24901

Phone: (304) 647-5980  
Fax: (304) 647-5980  
Cellular: (304) 667-7500  
Email: jsfcpa@writeeme.com

August 1, 2000

CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

City of Gary  
P.O. Box 310  
Gary, West Virginia 24836

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

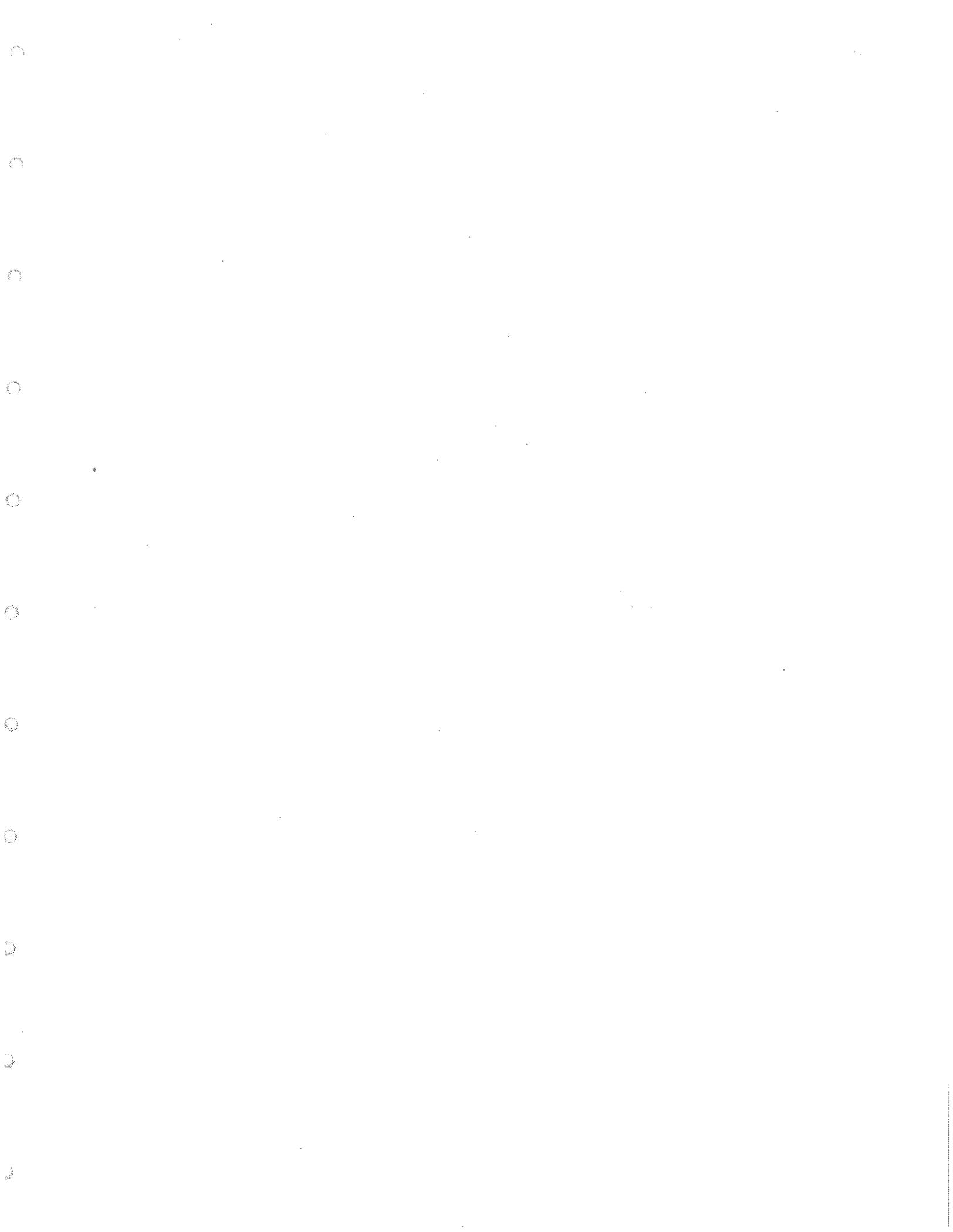
West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301

Ladies and Gentlemen:

I have reviewed the water service rates of the City of Gary, West Virginia (the "Issuer") enacted by the Issuer on November 9, 1999, and projected operation and maintenance expenses and anticipated customer usage provided by Stafford Consultants Incorporated. It is my opinion that such rates are adequate (i) to provide for all operating expenses of the waterworks system of the Issuer, and (ii) to leave a balance each fiscal year equal to at least 115% of the maximum amount required in any succeeding fiscal year for payment of principal and interest, if any, on the Issuer's Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program).

Very truly yours,

  
JEFFREY S. FEAMSTER, CPA



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 1<sup>st</sup> day of August, 2000, in Charleston, West Virginia, the Authority received the entire original issue of \$1,786,911 in aggregate principal amount of the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the City of Gary (the "Issuer"), dated August 1, 2000, issued in the form of one bond, fully registered to the Authority, and numbered AR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 1<sup>st</sup> day of August, 2000.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

Barbara B. Meadows  
Authorized Representative

06/30/00  
009056/00301

M0303011.1



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

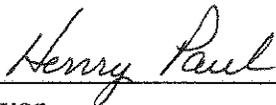
RECEIPT FOR BOND PROCEEDS

The undersigned Mayor of the City of Gary (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 1<sup>st</sup> day of August, 2000, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the \$1,786,911 City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated August 1, 2000, (the "Bonds"), of \$44,673, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 1<sup>st</sup> day of August, 2000.

CITY OF GARY

  
\_\_\_\_\_  
Mayor

07/14/00  
009056/00301

M0303028.1



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE AND DELIVER THE BONDS

August 1, 2000

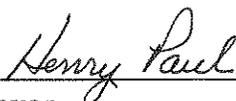
One Valley Bank, National Association  
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$1,786,911 Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), in the form of one bond, numbered AR-1, dated August 1, 2000 (the "Bonds"), of the City of Gary, West Virginia (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on June 6, 2000, effective July 11, 2000, and a Supplemental Resolution duly adopted by the Issuer on July 11, 2000.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

CITY OF GARY

  
\_\_\_\_\_  
Mayor

(SEAL)

Attest:  
  
\_\_\_\_\_  
Recorder

06/30/00  
009065/00301



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 1<sup>st</sup> day of August, 2000, by and between the CITY OF GARY, WEST VIRGINIA, a municipal corporation (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,786,911 Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Bond Ordinance duly passed by the Issuer on June 6, 2000, effective July 11, 2000, and a Supplemental Resolution duly adopted July 11, 2000 (collectively, the "Ordinance");

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

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

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

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

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

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

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

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

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

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

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

ISSUER:

City of Gary  
P.O. Box 310  
Gary, WV 24836  
Attention: Mayor

REGISTRAR:

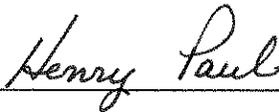
One Valley Bank, National Association  
P.O. Box 1793  
Charleston, WV 25326  
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

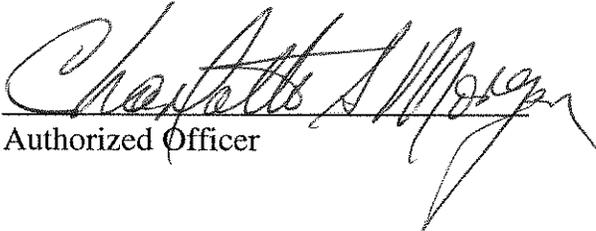
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

CITY OF GARY

  
\_\_\_\_\_  
Mayor

ONE VALLEY BANK, NATIONAL ASSOCIATION

  
\_\_\_\_\_  
Authorized Officer

06/30/00  
009056/00301

EXHIBIT A

See Bond Ordinance (Tab No. 11)  
See Supplemental Resolution (Tab No. 12)



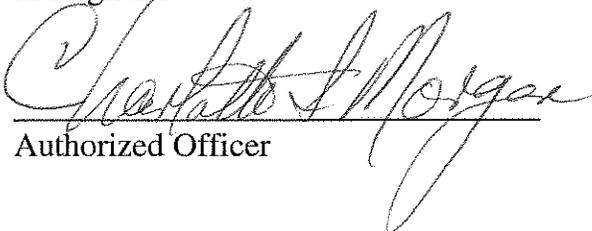
CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

CERTIFICATE OF REGISTRATION OF BONDS

ONE VALLEY BANK, NATIONAL ASSOCIATION, Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the City of Gary, West Virginia (the "Issuer"), dated August 1, 2000, in the principal amount of \$1,786,911, and numbered AR-1, was registered as to principal only in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 1<sup>st</sup> day of August, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

  
Authorized Officer

06/30/00  
009056/00301

M0302989.1

25



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

AMERIBANK, Welch, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Gary, West Virginia (the "Issuer"), passed by the Issuer on June 6, 2000, effective July 11, 2000, and a Supplemental Resolution adopted by the Issuer on July 11, 2000 (collectively, the "Ordinance"), authorizing the issuance of the City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), in the aggregate principal amount of \$1,786,911, dated August 1, 2000, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

Witness my signature on this 1<sup>st</sup> day of August, 2000.

AMERIBANK



Authorized Officer

06/30/00  
009056/00301

M0303010.1



WV MUNICIPAL BOND COMMISSION

Suite 300 - L & S Building  
812 Quarrier Street, Charleston, WV 25301  
(304) 348-3971

3.12

NEW ISSUE REPORT FORM

Date of Report: 8/1/00

ISSUE: City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program)

ADDRESS: P.O. Box 310, Gary, WV 24836 COUNTY: McDowell

PURPOSE OF ISSUE: New Money  Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: 8/1/00 CLOSING DATE: 8/1/00

ISSUE AMOUNT: \$1,786,911 RATE: 0%; Administrative Fee: 0.5%

1st DEBT SERVICE DUE: 12/1/2001 1st PRINCIPAL DUE: 12/1/2001

1st DEBT SERVICE AMOUNT: \$14,891 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson & Kelly PLLC  
Contact Person: Samme L. Gee, Esquire  
Phone: (304) 340-1318

UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

CLOSING BANK: Ameribank  
Contact Person: Connie Lambert  
Phone: (304) 436-2171

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Henry Paul  
Position: Mayor  
Phone: (304) 448-2209

OTHER: West Virginia Bureau for Public Health  
Contact Person: Walt Ivey, P.E.  
Function: \_\_\_\_\_  
Phone: (304) 558-2981

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_

Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
Reserve Account: \$ \_\_\_\_\_  
Other: \_\_\_\_\_ \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:

By \_\_\_\_\_ Wire \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_

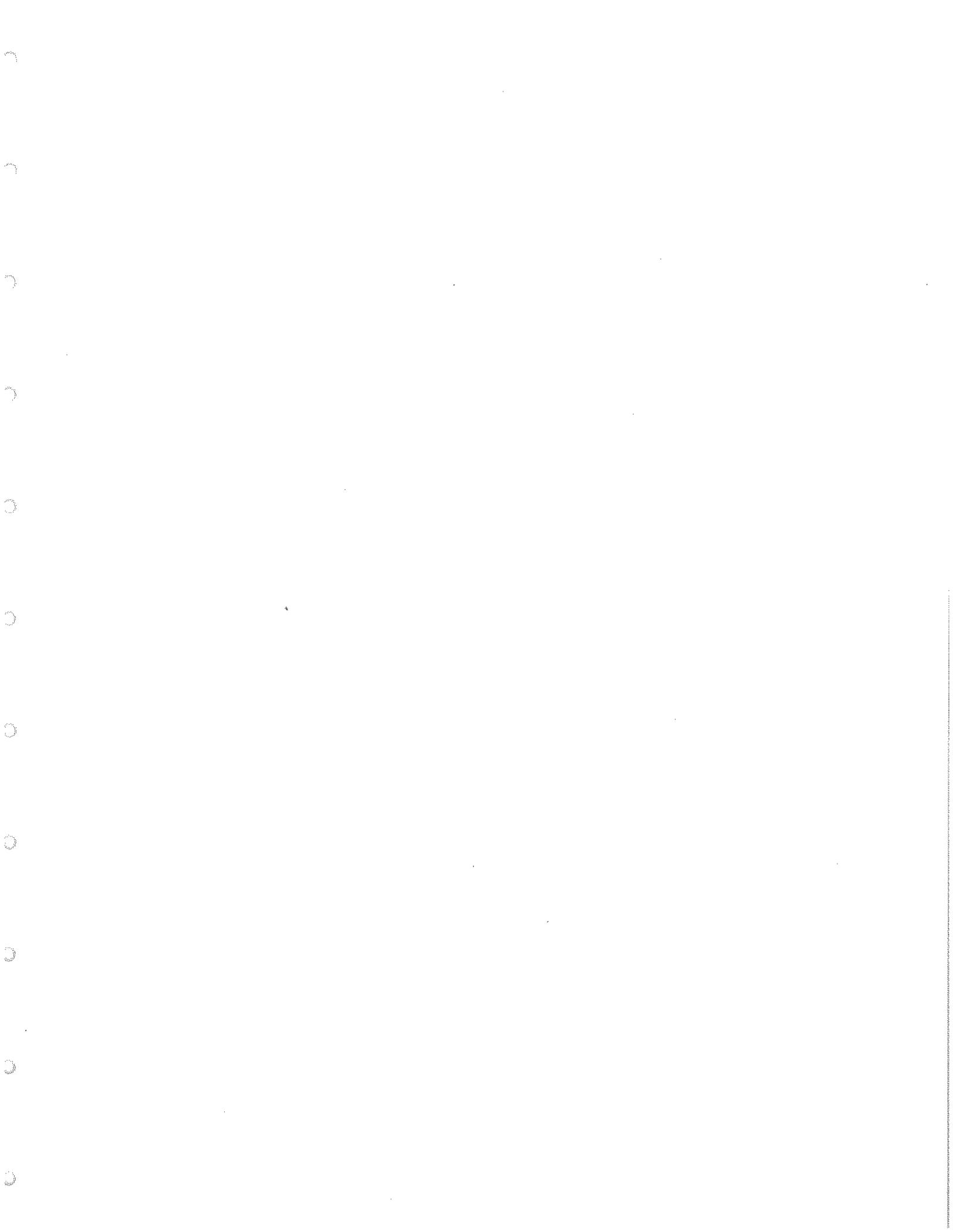
To Escrow Trustee: \$ \_\_\_\_\_  
To Issuer: \$ \_\_\_\_\_  
To Cons.Invest.Fund \$ \_\_\_\_\_  
To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: \_\_\_\_\_

FOR MUNICIPAL BOND COMMISSION USE ONLY:

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

07/27/00  
009056/00301





STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

CECIL H. UNDERWOOD  
GOVERNOR

October 17, 1997

The Honorable Henry Paul  
Mayor  
City of Gary  
Post Office Box 310  
Gary, West Virginia 24836-0310

Dear Mayor Paul:

Thank you for your application to the Small Cities Block Grant Program for fiscal year 1997.

I am pleased to approve your request in the amount of \$1,130,911 to the city of Gary. These funds consist of \$802,000 of FY1997 funds and a \$328,911 commitment of FY1996 funds from the McDowell County Commission to address their Community First program.

These funds will enable you to make phase one improvements for a regional water system for southeastern McDowell County.

The West Virginia Development Office, Community Development Division 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 Gary.

Very sincerely,

A handwritten signature in black ink, appearing to read "Cecil H. Underwood", with a large, stylized flourish extending to the right.

Cecil H. Underwood

CHU:tha

cc: McDowell County Commission

28A



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

CECIL H. UNDERWOOD  
GOVERNOR

June 14, 2000

The Honorable Henry Paul  
Mayor  
City of Gary  
Post Office Box 340  
Gary, West Virginia 24836

Dear Mayor Paul:

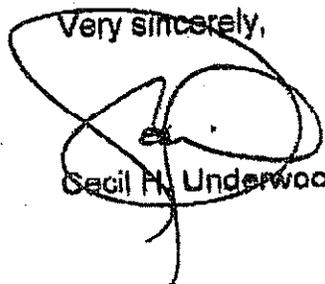
Thank you for your request to the Small Cities Block Grant (SCBG) program.

Your request has been approved in the amount of \$119,089 bringing your total SCBG award to \$1,250,000. These funds will enable you to award construction contracts for Phase I of the Regional Water Project.

The West Virginia Development Office, Community Development staff, will contact you to make the necessary amendments to the current contract in order to proceed with your project.

I am pleased to assist with these improvements for the citizens of the city of Gary.

Very sincerely,

  
Cecil H. Underwood

CHU:jbo

28B





Cecil H. Underwood, Governor

WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0311

August 26, 1999

The Honorable Henry Paul  
Mayor  
City of Gary  
Post Office Box 310  
Gary, West Virginia 24836-1311

A handwritten signature in black ink, appearing to read "Paul", written over a horizontal line.

RECEIVED  
AUG 30 1999  
REGION I PDC

Dear Mayor Paul:

Congratulations on the approval of a \$1 million Appalachian Regional Commission (ARC) grant for a total project cost of \$3.7 million to the City of Gary for its water system upgrade project. A copy of the approval letter and official ARC project description are enclosed. Please keep this information with your project files.

Should there be a need for any changes in the scope of the project or project funding, a request should be made to the West Virginia Development Office.

Please be aware that ARC funds are considered to be the last source of funding committed to a project. Should there be a cost underrun, the funds not used are considered Appalachian Regional Commission funds and would be returned to the Commission.

If you should have any questions, please feel free to contact me at 304-558-2001.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph H. Goolsby", written over a horizontal line.

Ralph H. Goolsby  
Manager

RHG:cc

cc: Norman Kirkham, Region I PDC  
Tracey Rowan, WVDO  
Jeanna Bailes, WVDO

Enclosure

29



CITY OF GARY  
WATER REVENUE BONDS, SERIES 2000 A  
(WEST VIRGINIA DWTRF PROGRAM)

CERTIFICATE OF FILING OF FINANCING STATEMENT

The undersigned Secretary of State of the State of West Virginia, hereby certifies that on the date and at the hour set forth below, there was filed in my office:

(1) A FINANCING STATEMENT between the City of Gary, as debtor, and the West Virginia Water Development Authority, as secured party, filed on 8-1-00, 2000, at the hour of 4:03 p.m. as Financing Statement No. 0544577.

[SEAL]



---

Secretary of State of the State of West Virginia

07/20/00  
009056/00301

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code. 3. Maturity date (if any): **9/1/21**

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

City of Gary  
P.O. Box 310  
Gary, WV 24736

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

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

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

0544577

00 AUG -1 PM 4:03

WV SEC. OF STATE  
FILED

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

See Schedule I attached hereto and made a part hereof.

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

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

already subject to a security interest in another jurisdiction when it was brought into this state.

which is proceeds of the original collateral described above in which a security interest was perfected:

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

Filed with: **West Virginia Secretary of State**

City of Gary

West Virginia Water Development  
Authority

By: *Henry Paul*

Signature(s) of Debtor(s)

Mayor

By: *David Blyden*

Signature(s) of Secured Party(ies)

Director

(2) Filing Officer Copy - Numerical

**SCHEDULE I**  
**TO FINANCING STATEMENT**

All Gross Revenues from the System; the System; all funds in the Revenue Fund, the Renewal and Replacement Fund, the Bond Construction Trust Fund, the Series 2000 A Bonds Sinking Fund and the Series 2000 A Bonds Reserve Account; and all funds therein deposited from time to time; and all proceeds of the foregoing.

For the purposes of this financing statement, these terms are defined as follows:

"Bond Construction Trust Fund" means the fund created by Section 5.01 of the Bond Ordinance described below.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System 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) or any Tap Fees, as hereinafter defined.

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

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

"Renewal and Replacement Fund" means the fund created by Section 5.01 of the Bond Ordinance described below.

"Revenue Fund" means the fund created by Section 5.01 of the Bond Ordinance described below.

"Series 2000 A Bonds Reserve Account" means the account created by Section 5.02 of the Bond Ordinance described below.

"Series 2000 A Bonds Sinking Fund" means the fund created by Section 5.02 of the Bond Ordinance described below.

"System" means the complete existing water system of the Issuer, and shall include any extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

Other defined terms used in this Schedule I and not defined herein shall have the meanings ascribed to them in the Bond Ordinance authorizing the City of Gary Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), a copy of which is on file and may be inspected at the office of the Secured Party indicated above.

06/27/00  
009056/00301



# JACKSON & KELLY PLLC

ATTORNEYS AT LAW

6000 HAMPTON CENTER

P. O. BOX 619

MORGANTOWN, WEST VIRGINIA 26507

TELEPHONE 304-599-3000 TELECOPIER 304-285-2040

<http://www.jacksonkelly.com>

1000 TECHNOLOGY DRIVE  
FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

1660 LINCOLN STREET  
DENVER, COLORADO 80264  
TELEPHONE 303-390-0003

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40595  
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI,  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS.

1600 LAIDLEY TOWER  
CHARLESTON, WEST VIRGINIA 25322  
TELEPHONE 304-340-1000

300 FOXCROFT AVENUE  
MARTINSBURG, WEST VIRGINIA 25402  
TELEPHONE 304-263-8800

256 RUSSELL AVENUE  
NEW MARTINSVILLE, WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

412 MARKET STREET  
PARKERSBURG, WEST VIRGINIA 26101  
TELEPHONE 304-424-3490

1144 MARKET STREET  
WHEELING, WEST VIRGINIA 26003  
TELEPHONE 304-233-4000

August 1, 2000

City of Gary  
Post Office Box 310  
Gary, WV 24836

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, WV 25301

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

Re: City of Gary Water Revenue Bonds, Series 2000 A  
(West Virginia DWTRF Program)

Ladies and Gentlemen:

We have served as bond counsel to the City of Gary ("the Issuer"), a municipal corporation, in connection with the issuance of its Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated July 11, 2000, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in

City of Gary  
West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
August 1, 2000  
Page 2

the principal amount of \$1,786,911, in the form of one bond, registered as to principal only to the Authority, with principal installments payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing December 1, 2001, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds bear no interest and are subject to the DWTRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project") and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on June 6, 2000, effective July 11, 2000, as supplemented by a Supplemental Resolution duly adopted by the Issuer on July 11, 2000 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

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

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

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

3. The Loan Agreement inures to the benefit of the Authority and the BPH and cannot be amended so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Issuer without the written consent of the Authority and the BPH.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with the terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

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

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality or county commission, political subdivision or agency thereof.

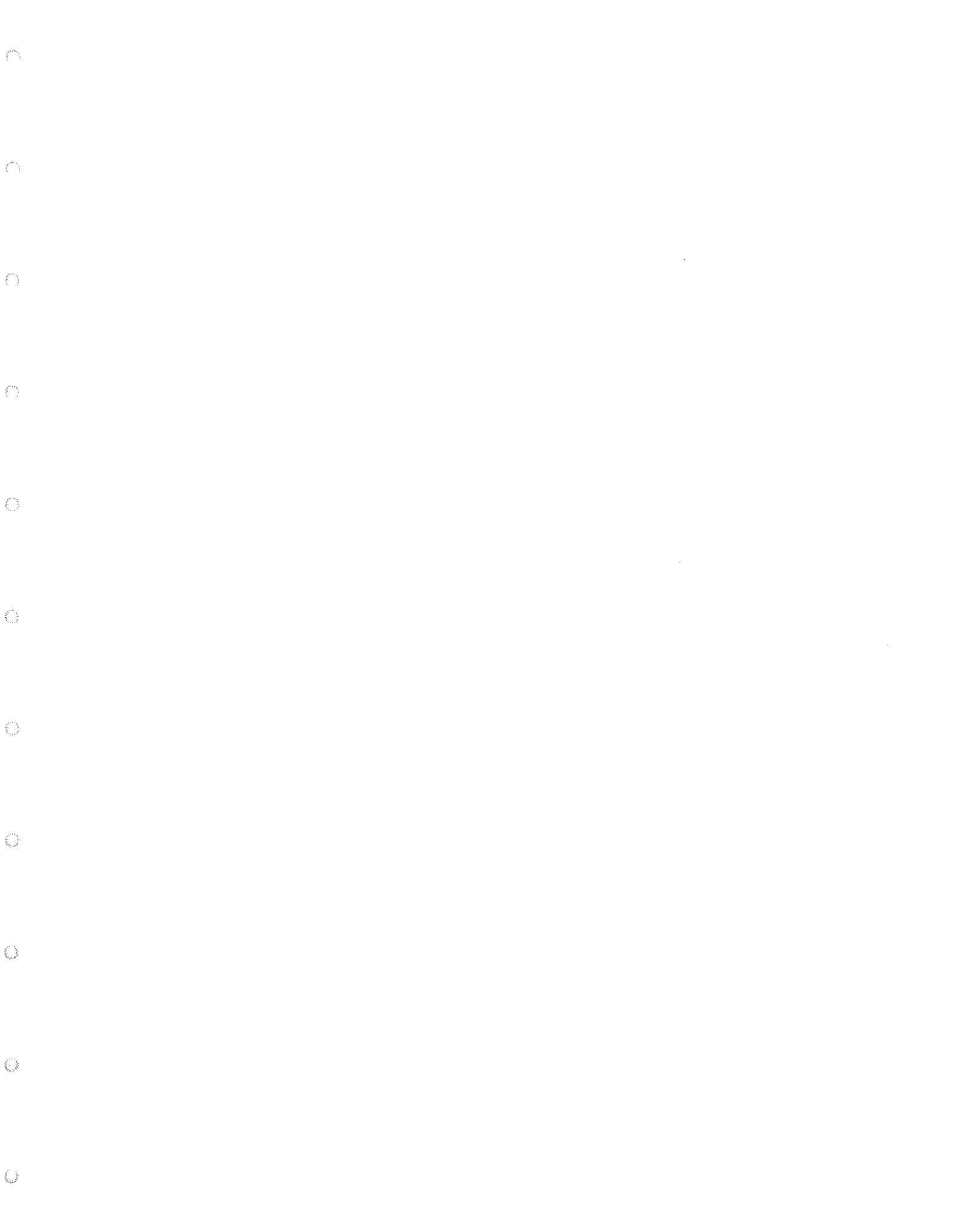
7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

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

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

Very truly yours,

*Jackson & Kelly PLLC*



**RUDOLPH J. MURENSKY, II**

ATTORNEY AT LAW  
126 McDOWELL STREET  
P.O. BOX 588  
WELCH, WEST VIRGINIA 24801-0588

---

Phone: (304) 436-2953

Fax: (304) 436-2764

August 1, 2000

City of Gary  
PO Box 310  
Gary, WV 24836

West Virginia Bureau for Public Health  
Office of Environmental Health Services  
815 Quarrier Street, Suite 418  
Charleston, WV 25301

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

Jackson & Kelly PLLC  
PO Box 553  
Charleston, WV 25322

RE: City of Gary Water Revenue Bonds,  
Series 2000 A  
(West Virginia DWTRF Program)

Ladies and Gentlemen:

I am counsel to the City of Gary in McDowell County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson & Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated July 11, 2000, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), a Bond Ordinance duly passed by Issuer on June 6, 2000, effective July 11, 2000, as supplemented by a Supplemental Resolution duly adopted by the Issuer on July 11, 2000 (collectively, the "Ordinance"), and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and

construct the Project, to operate and maintain the System and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. 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.

3. The members and officers of the Council of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

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

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule order or decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the BPH, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges. The Issuer has received the PSC orders entered on January 18, 2000, and July 25, 2000, in Case No. 99-1308-W-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC Order entered January 18, 2000, has expired prior to the date hereof without any appeal. The time for appeal of the PSC order entered July 25, 2000, has not expired prior to the date hereof. However, the parties thereto have stated that they do not intend to appeal such order. Such order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to the original application.

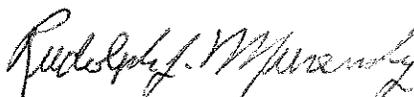
7. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Ordinance, 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.

8. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are

adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

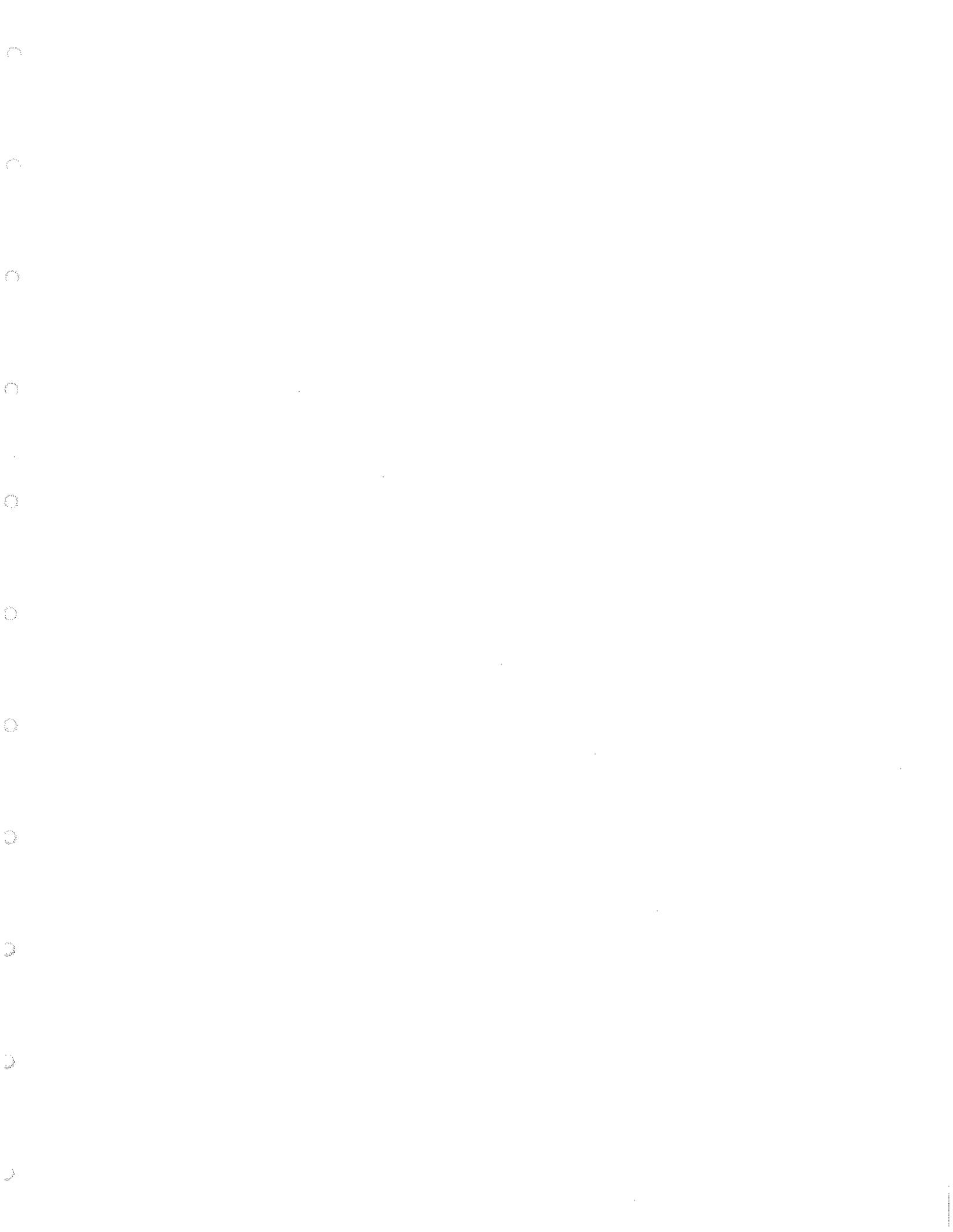
Very truly yours,

A handwritten signature in cursive script, appearing to read "Rudolph J. Murensky, II".

Rudolph J. Murensky, II

RJM/db

cc: Francesca Tan, Esq.



**RUDOLPH J. MURENSKY, II**

ATTORNEY AT LAW  
126 McDOWELL STREET  
P.O. BOX 588  
WELCH, WEST VIRGINIA 24801-0588

Phone: (304) 436-2953

Fax: (304) 436-2764

August 1, 2000

West Virginia Bureau for Public Health  
Office of Environmental Health Services  
815 Quarrier Street, Suite 418  
Charleston, WV 25301

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

RE: City of Gary

Ladies and Gentlemen:

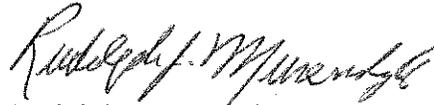
I represent the City of Gary (the "Issuer") with regard to a proposed project to construct improvements to its water treatment plant, water storage system and water distribution system (the "Project"), and provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Bureau for Public Health (the "BPH") for the Project. Please be advised of the following:

1. I am of the opinion that the Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the BPH.
2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.
3. I have investigated and ascertained the location of, and am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Stafford Consultants Incorporated, the consulting engineers for the Project.
4. I have examined the records on file in the Office of the Clerk of the County Commission of McDowell County, West Virginia, the county in which the Project is to be located, and, in my opinion, subject to the correctness of the indices in said clerk's office, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of McDowell County to protect the legal title to and interest of the Issuer.

If you have any questions regarding any of the information contained in this final title opinion, or need anything further, please do not hesitate to let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rudolph J. Murensky, II". The signature is written in a cursive style with a large initial "R".

Rudolph J. Murensky, II

RJM/db

cc: Francesca Tan, Esq.