

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

Closing Date: August 3, 2009

TRANSCRIPT OF PROCEEDINGS

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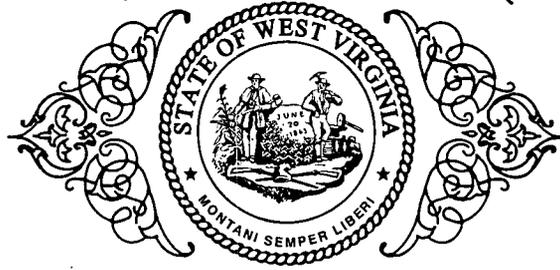
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# State of West Virginia



## Certificate

*I, Natalie E. Tennant, 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, AND CHAPTER 8 ARTICLE 19 OF THE 2008 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 30, 2009.*

*Natalie E. Tennant*  
Secretary of State

## ARTICLE 19

### MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS

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

##### Section

- 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.

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

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PART I—MUNICIPAL 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, 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 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, 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.

Acts 1933, Ex. Sess., c. 26, § 1; Acts 1937, c. 52; Acts 1939, c. 97; Acts 1949, c. 90; Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1983, c. 151; Acts 1986, c. 118; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

**Cross References**

Creation by charter provision of certain independent city boards, home rule powers for cities, see § 8-12-3.

General powers of every municipality and its governing body, see § 8-12-5.

**Library References**

**Key Numbers**

Electricity ☞1.5.  
 Waters and Water Courses ☞183.  
 Westlaw Key Number Searches: 145k1.5;  
 405k183.

**Encyclopedias**

C.J.S. Electricity § 6.  
 C.J.S. Waters §§ 228, 235.

**PART II—LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS**

§ 8-19-2. Repealed by Acts 1974, c. 78

**PART III—RIGHT OF EMINENT DOMAIN**

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

For the purpose of acquiring, constructing, establishing or extending any waterworks system or 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 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 commis-

sion 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, 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.

Acts 1933, Ex. Sess., c. 26, § 9; Acts 1937, c. 52; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1983, c. 151; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Eminent Domain ⇨ 28, 35.

Westlaw Key Number Searches: 148k28;  
148k35; 268k950(15).

##### Encyclopedias

C.J.S. Eminent Domain §§ 38 to 39, 49.

#### Notes of Decisions

##### In general 1

##### 1. In general

The section of the municipal home rule statute enabling municipalities to acquire and establish water, gas and electric systems does not authorize the use of the power of eminent do-

main for the acquisition of privately owned public utilities, but merely authorizes the establishment of utility systems through the process of construction and by the purchase of franchises and properties of going utility concerns. Code 1937, 8A-4-26. City of Mullens v. Union Power Co., 1940, 7 S.E.2d 870, 122 W.Va. 179. Eminent Domain ⇨ 47(1)

#### 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

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.

Acts 1933, Ex. Sess., c. 26, § 3; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1955, c. 133; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1978, c. 72; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1984, c. 128; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141; Acts 1992, c. 147.

#### Library References

##### Key Numbers

Municipal Corporations ☞950(15).  
Taxation ☞215, 218.  
Westlaw Key Number Searches: 371k215;  
371k218.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to  
1709.  
C.J.S. Taxation §§ 252, 256, 260.

#### § 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, 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.

Acts 1933, Ex. Sess., c. 26, § 4; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 103; Acts 1981, 1st Ex. Sess., c. 2; Acts 1990, c. 141.

Library References

Key Numbers

Municipal Corporations ¶294(7).  
Westlaw Key Number Search: 268k294(7).

Encyclopedias

C.J.S. Municipal Corporations § 981.

§ 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.

Acts 1933, Ex. Sess., c. 26, § 5; Acts 1933, 2nd Ex. Sess., c. 49, § 5; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1984, c. 128; Acts 1990, c. 141.

Library References

Key Numbers

Municipal Corporations ¶927.  
Westlaw Key Number Search: 268k927.

Encyclopedias

C.J.S. Municipal Corporations § 1699.

§ 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 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.

Acts 1933, Ex. Sess., c. 26, § 6; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

## Library References

## Key Numbers

Municipal Corporations ⇨950(15).

Westlaw Key Number Search: 268k950(15).

## Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

**§ 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 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.

Acts 1933, Ex. Sess., c. 26, § 7; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

## Library References

## Key Numbers

Municipal Corporations ⇨950(15).

Westlaw Key Number Search: 268k950(15).

## Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

## § 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 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.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Municipal Corporations § 919.

Westlaw Key Number Search: 268k919.

##### Encyclopedias

C.J.S. Municipal Corporations § 1661.

### § 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.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

## Library References

## Key Numbers

Municipal Corporations ⇨232.  
Westlaw Key Number Search: 268k232.

## Encyclopedias

C.J.S. Municipal Corporations § 905.

**§ 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.

Acts 1933, Ex. Sess., c. 26, § 8; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

## Library References

## Key Numbers

Municipal Corporations ⇨950(15).  
Westlaw Key Number Search: 268k950(15).

## Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

**§ 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.

Acts 1933, Ex. Sess., c. 26, § 11; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, c. 118; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Municipal Corporations ¶951.  
Westlaw Key Number Search: 268k951.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1704 to 1705.

#### § 8-19-12a. Lien for delinquent service rates and charges; 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 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.

(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.

Acts 1989, c. 133; Acts 1990, c. 140; Acts 1990, c. 141.

**Library References**

**Key Numbers**

Waters and Water Courses ☞203(14).  
Westlaw Key Number Search: 405k203(14).

**Encyclopedias**

C.J.S. Waters § 308.

**§ 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.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

**Key Numbers**

Electricity ☞11.2(3).  
Waters and Water Courses ☞203(13).  
Westlaw Key Number Searches: 145k11.2(3);  
405k203(13).

**Encyclopedias**

C.J.S. Electricity § 29.  
C.J.S. Waters § 305.

**§ 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, con-

structed, 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.

Acts 1933, Ex. Sess., c. 26, § 10; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Municipal Corporations Ⓔ911.  
Westlaw Key Number Search: 268k911.

##### Encyclopedias

C.J.S. Municipal Corporations § 1649.

### § 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.

Acts 1939, c. 98, § 10; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Municipal Corporations Ⓔ885.  
Westlaw Key Number Search: 268k885.

##### Encyclopedias

C.J.S. Municipal Corporations § 1629.

### § 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.

Acts 1933, Ex. Sess., c. 26, § 12; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

#### Key Numbers

Municipal Corporations Ⓔ955(1).

Westlaw Key Number Search: 268k955(1).

#### 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 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 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.

Acts 1961, c. 105; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

#### Library References

##### Key Numbers

Municipal Corporations §908.  
Westlaw Key Number Search: 268k908.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1646, 1652.

#### § 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 therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, 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.

Acts 1933, Ex. Sess., c. 26, § 13; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

Library References

**Key Numbers**  
Municipal Corporations ⇨271, 272.

Westlaw Key Number Searches: 268k271;  
268k272.

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 of this chapter.

Acts 1961, c. 104; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

Library References

**Key Numbers**  
Electricity ⇨1.5.  
Waters and Water Courses ⇨183.  
Westlaw Key Number Searches: 145k1.5;  
405k183.

**Encyclopedias**  
C.J.S. Electricity § 6.  
C.J.S. Waters §§ 228, 235.

**§ 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.

Acts 1933, Ex. Sess., c. 26, § 14; Acts 1969, c. 86; Acts 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, 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.

Acts 1994, c. 31.

**Library References**

**Key Numbers**

Waters and Water Courses ⇨202.

Westlaw Key Number Search: 405k202.

**Encyclopedias**

C.J.S. Waters § 280.

West's  
Annotated Code  
of West Virginia

*Using the Classification and  
Numbering System of the  
1931 Code of West Virginia,  
as Amended*

Chapters 8 to 10

2008  
Cumulative Annual Pocket Part

Replacing 2007 Pocket Part supplementing 2002 Main Volume.

Includes laws through the 2008 First Extraordinary Session

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and to the lessee or occupant of such building. The owner or owners shall connect to the municipal sewer within thirty days after notice to connect has been sent by the municipality. Regardless of whether the owner or owners connect to such sewer, the municipality may bill the owner or owners of the lot or parcel and the owner or owners shall pay the municipality's charge based on the actual water consumption on the lot or parcel. If the lot or parcel is not metered, the municipality's charge shall be based on the municipality's good faith estimate of the consumption on the lot or parcel.

Acts 1908, c. 8, § 3; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1999, c. 202, eff. 90 days after March 10, 1999; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

Formerly Code 1923, c. 47, § 49c(3).

**Notes of Decisions**

**In general** 1

**1. In general**

Owners of property that was located outside of town's corporate limits but that was mandated by town to be connected to town's new sewer system had no constitutional due process right to personal notice and opportunity to be heard before town approved construction of the new sewer system. *Buda v. Town of Masontown*, 2005, 617 S.E.2d 831, 217 W.Va. 284. Constitutional Law ⇌ 4372; Municipal Corporations ⇌ 712(4)

Mandatory connection to town's sewer system and forced abandonment of septic systems on owners' properties, which were located outside town's corporate limits, did not amount to a taking of property for constitutional purposes; state's police power included right to regulate sewer systems, state could delegate power to subordinate public entities, and owners held their property subject to proper exercise of police power for common good. *Buda v. Town of Masontown*, 2005, 617 S.E.2d 831, 217 W.Va. 284. Eminent Domain ⇌ 2.18

**ARTICLE 19**

**MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS**

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

**Section**

8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

**Section**

charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

**Part IV—Revenue Bond Financing.**

8-19-12a. Deposit required for new customers; lien for delinquent service rates and

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

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

**PART II—LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS**

**§ 8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges**

(a) For the purposes of this section:

(1) "Contract" means an agreement entered into by a municipality with any other party for the purchase of electric output, capacity or energy from a project as defined herein.

(2) "Any other party" means any other legal entity, including, but not limited to, another municipality, political subdivision, public authority, agency or instrumentality of any state or the United States, a partnership, a limited partnership, a limited liability company, a corporation, an electric cooperative or an investor-owned utility existing under the laws of any state; and

(3) "Project" or "projects" means systems or facilities owned by another party and used for the generation, transmission, transformation or supply of electric power, or any interest in

them, whether an undivided interest as a tenant in common or otherwise, or any right to the output, capacity or services thereof.

(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provide that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entities' obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under subsection (b) of this section may extend for more than fifty years or fifty years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency, commission, instrumentality or political subdivision thereof except as otherwise specifically required by law.

(d) A contract under subsection (b) of this section may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or upon any of its income, receipts or revenues, except the revenues of the municipality's electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of subsection (b) of this section is obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services it sells, furnishes or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: *Provided*, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of section four-b, article two, chapter twenty-four of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.

Acts 2007, c. 186, eff. June 6, 2007.

#### PART IV—REVENUE BOND FINANCING

#### § 8-19-12a. **Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure**

(a)(1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty 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. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent

payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the public service commission may prescribe: *Provided*, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of water facilities ten days after the water services become delinquent regardless of whether the municipality or governing body utilizes the security deposit to satisfy any delinquent payments.

(b) All rates or charges for water service whenever delinquent 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.

Acts 1989, c. 133; Acts 1990, c. 140; Acts 1990, c. 141; Acts 2004, c. 135, eff. 90 days after March 12, 2004.

#### PART VI—OPERATION BY BOARD; CONSTRUCTION

##### § 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 or constructs water mains, shall ensure

that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective the first day of July, two thousand seven, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the regular session of the Legislature in the year two thousand and eight. 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, article one, chapter sixteen of the West Virginia Code as amended: *Provided, however*, 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 required by the public or private utility: *Provided further*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health and Human Resources.

Acts 1994, c. 31; Acts 2007, c. 187, eff. June 16, 2007.

ARTICLE 20

COMBINED SYSTEMS

Part III—Revenue Bond Financing.

Section

Section

8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to

cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

PART III—REVENUE BOND FINANCING

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do: *Provided*, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for

IN THE MATTER OF TOWN OF GILBERT:

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INCORPORATION:

On the 14th day of January, 1918, that being the first day of the present (regular) term of this court, Lee Ellis, Sr., H. G. Ferrell and Krastus Ellis, by Goodykoontz and Scherr, Esquires, their attorneys, appeared and presented in open court their petition praying the certificate of incorporation of the above named Town, and presented therewith the certificate of the vote of the resident voters of said territory, referred to in said petition, and described in the notice exhibited with said petition on said question and upon their motion the said petition was received and filed, as was likewise the certificate of vote, and the second day of this term, to-wit; the 15th day of January, 1918, was fixed for hearing, upon said application and for the consideration of said certificate; all of which was and is shown and provided for by an order made and entered by this court on said day and entered in Law Order Book of this court.

And on the 15th day of January, 1918, the petitioners again appeared, by their said attorneys, and said matter having been regularly set down for hearing on that day, the court proceeded to and did hear the matters arising upon the said application by petition and proceeded to a consideration of the said certificate; and it appearing that a map and survey of the territory to be embraced in said Town, together with the census, oaths of commissioners and oaths of poll clerks, were filed in open court on said January 14th, 1918, along with the said petition and certificate of vote, but that no order was entered showing the filing of the same; and the Court having seen and inspected the said several papers, including the said map, and having found that they and each of them are in all respects duly signed and sworn to as required by law, upon motion, the filing of each of said papers as aforesaid, is hereby confirmed, and the same are made a part of said petition to be read in connection therewith.

And it having been made to appear to the court upon satisfactory proof, and that is to say, upon the evidence of witnesses duly sworn, and testifying in open court upon said matters, and from the said map, affidavit of posting notices, notice, census, oaths of commissioners, oaths of poll clerks and certificates of vote, that the provisions and requirements of Chapter 47 of the Code of West Virginia, relating to the incorporation of towns and villages, have been complied with, and that no part of the boundary described and included in the said map, survey and notice is included within any incorporated town or village or city, and that said territory contains a resident population of more than 100 persons, and is not less than one-fourth of one mile in extent and not more than a reasonable amount of territory proportionate to the number of residents therein; and it further appearing that an election upon the question of incorporation of said town was

held in accordance with law on January 8th, 1918, and that a majority of all of the qualified voters residing within said territory was presented by petition, together with said certificate of vote, on the day specified in said notice; from all of which the court is of opinion to, and doth hereby grant the certificate of incorporation of said Town of Gilbert, as prayed for.

IT IS THEREFORE ORDERED AS FOLLOWS:

FIRST: That the territory shown and described by the said map and survey, and as hereinafter described be, and the same is hereby incorporated by the name of Town of Gilbert, and that the said Town is only authorized, within said corporate limits, to exercise all of the corporate powers enumerated by Chapter 47 of the Code of West Virginia, from and after the date of the certificate of incorporation hereinafter provided for:

SECOND: That the Clerk of this court is hereby ordered and directed to issue a certificate of the incorporation of said Town in the form of substance as follows:

A certificate under oath of Lee Ellis, Sr., H. G. Ferrell and M. B. Hatfield having been filed in the Circuit Court of Mingo County, West Virginia, on the 14th day of January, 1918, showing that a majority of all the qualified voters residing in the boundary to-wit;

Beginning at a stake on the bank of Guyandotte River at the mouth of Harry's Branch thereof (Station 5036-- 50 as laid out by the C. & O. Railway company); thence S. 82. W. 600 feet to a white walnut; S. 18. W. 1990 feet; S. 18. 25' E. 1740 feet; S. 2. 40' E. 1000 feet; S. 78. 0' W. 1890 feet; N. 75. 30' W. 1475 feet; S. 36. 35' W. 1075 feet to a large boulder on Skillet Fork just above the mouth of Perry's Hollow; S. 16. 25' E. 7220 feet crossing Guyandotte River; N. 24. E. 4580 feet to a beech near the bank of Stafford Branch; N. 37. 40' W. 5995 feet to the beginning containing 712 acres; have been given in due form of law in favor of the incorporation of the Town of Gilbert, in the District of Stafford and County of Mingo, West Virginia, bounded as herein set forth, and it having been made to appear to the satisfaction of the court that all of the provisions of Chapter 47 of the Code of West Virginia have been complied with by the applicants for said incorporation, the said Town of Gilbert is duly authorized within the corporate limits aforesaid to exercise all corporate powers conferred by said Chapter from and after the date of this certificate.

Which said certificate, herein-above provided for to be made and issued by said Clerk, shall be duly signed by said Clerk as such.

THIRD: That from and after the date of said certificate the territory embraced within the boundary therein shall be an incorporated Town by the name specified in said order and certificate, to-wit: Town of Gilbert.

FOURTH: That Robert Allen, Frank Ryan and Walter Ellis, three legally qualified voters within the territory embraced with<sup>in</sup> said Town, and who are hereby appointed for the purpose, shall act as commissioners of Election at the first election to be held in said Town as provided by Chapter 47 of the Code; and in case they shall refuse to act, then the said election may be held, conducted, certified and returned by any three legally qualified voters of said Town appointed for that purpose by the voters present on the day of the holding of said election. And the said Commissioners hereby appointed shall give notice, and shall hold and conduct the said election, and certify and return the vote thereof, and the result thereof, as required by law.

And the Clerk of this court is ordered and directed to enter this order of record in the Law Order Book of this Court

IN THE COUNTY COURT OF MINGO COUNTY, WEST VIRGINIA

ORDER APPROVING ANNEXATION OF ADDITIONAL TERRITORY BY THE TOWN OF GILBERT, WEST VIRGINIA, AND CERTIFYING A CHANGE IN THE CORPORATE BOUNDARIES AND LIMITS OF SAID TOWN.

A certificate of the Council of the Town of Gilbert was this day filed showing annexation of additional territory and a change in the corporate limits of said Town of Gilbert, in the manner required by law, and that by such change, the said corporate limits of said Town of Gilbert are hereby changed and extended as follows:

It is requested that the corporate limits, beginning and heading in a northerly direction, be extended along the mountain side of U. S. Highway No. 52 on the right, and along the Gilbert Creek ten (10) feet inside the No. 45 1/2 Right-of-way on the left, and then both boundaries north to the far or upper end of the Grace Ellis property.

Said territory hereby annexed is more particularly shown and designated as being the area shaded in red upon those certain State Road Commission of West Virginia Map Sheets Revised April 1959, copies of which are on file and available for public inspection at the Town Hall of the Town of Gilbert.

All the corporate boundaries and limits of said Town of Gilbert, as heretofore existing and not affected by the change in boundary herein set forth, shall remain in full force and effect.

It is, therefore, ORDERED that the annexation of such additional territory and such change in said corporate limits be, and the same are hereby, approved and confirmed, and the Clerk of this Court is directed to deliver to the said Council of the Town of Gilbert a certified copy of this order as soon as practicable after the filing of this Court.

ORDERED AND ENTERED on this 24<sup>th</sup> day of February, 1973.

[Signature]  
PRESIDENT

[Signature]  
COMMISSIONER

[Signature]  
COMMISSIONER

WITNESSED:  
[Signature]  
CLERK



TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

***OATH OF OFFICE AND CERTIFICATE***  
***STATE OF WEST VIRGINIA***

*State of West Virginia,*

*County of Mingo, To-Wit:*

I, Penny Sammons, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Council for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

Penny Sammons  
Council Penny Sammons

Taken, subscribed and sworn to before me the undersigned by Penny Sammons  
of Mingo County at Gilbert, West Virginia, on this the

23<sup>rd</sup> day of June 2009..

Michael Thornsby  
Judge Michael Thornsby



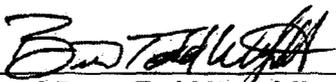
TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

**OATH OF OFFICE AND CERTIFICATE**  
**STATE OF WEST VIRGINIA**

*State of West Virginia,*

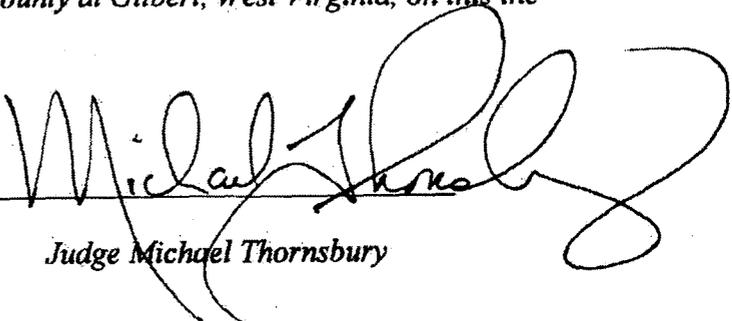
*County of Mingo, To-Wit:*

I, BRIAN TODD WESTFALL, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Council for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

  
\_\_\_\_\_  
Council Brian Todd Westfall

*Taken, subscribed and sworn to before me the undersigned by*

Brian Todd Westfall of Mingo County at Gilbert, West Virginia, on this the  
23<sup>rd</sup> day of June 2009.

  
\_\_\_\_\_  
Judge Michael Thornsbery



TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

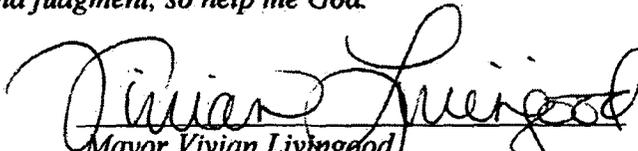
**OATH OF OFFICE AND CERTIFICATE**

**STATE OF WEST VIRGINIA**

*State of West Virginia,*

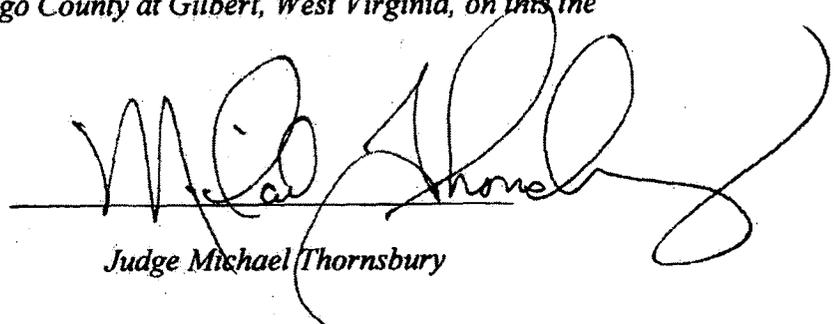
*County of Mingo, To-Wit:*

*I, Vivian Livingood, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Mayor for the Town of  
Gilbert to the best of my skill and judgment, so help me God.*

  
Mayor Vivian Livingood

*Taken, subscribed and sworn to before me the undersigned by*

Vivian Livingood of Mingo County at Gilbert, West Virginia, on this the  
23<sup>rd</sup> day of June 2009..

  
Judge Michael Thornsbury



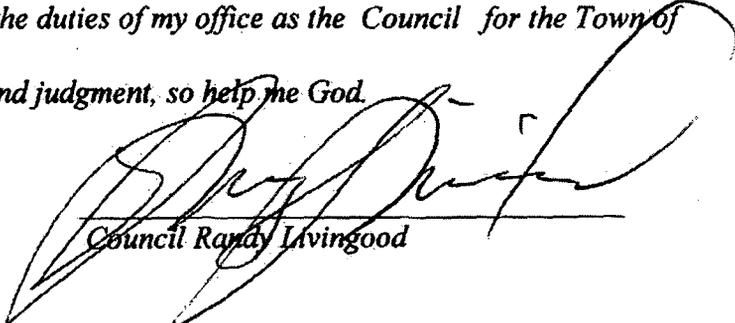
TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

**OATH OF OFFICE AND CERTIFICATE**  
**STATE OF WEST VIRGINIA**

*State of West Virginia,*

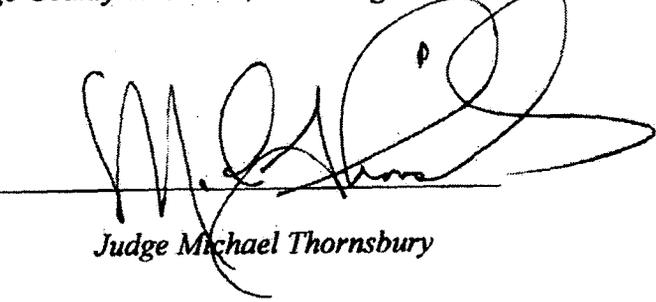
*County of Mingo, To-Wit:*

I, RANDY LIVINGOOD, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Council for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

  
Council Randy Livingood

Taken, subscribed and sworn to before me the undersigned by

Randy Livingood of Mingo County at Gilbert, West Virginia, on this the  
23<sup>rd</sup> day of June 2009..

  
Judge Michael Thornsbury



TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

***OATH OF OFFICE AND CERTIFICATE***

***STATE OF WEST VIRGINIA***

*State of West Virginia,*

*County of Mingo, To-Wit:*

I, Chris Turner, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Council for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

Council Rev. Marvin Chris Turner

Taken, subscribed and sworn to before me the undersigned by Rev. Marvin Chris Turner

\_\_\_\_\_ of Mingo County at Gilbert, West Virginia, on this the

23<sup>rd</sup> day of June 2009..

Judge Michael Thornsbury



TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

**OATH OF OFFICE AND CERTIFICATE**

**STATE OF WEST VIRGINIA**

*State of West Virginia,*

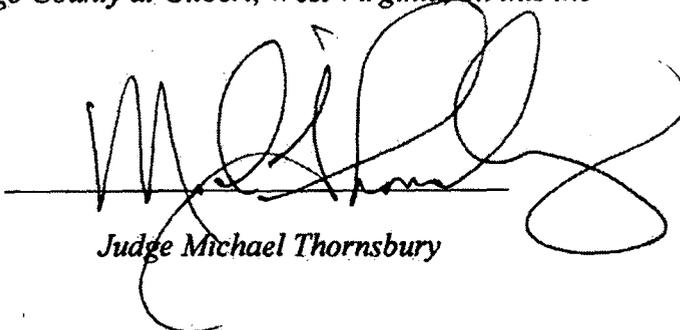
*County of Mingo, To-Wit:*

I, Sharon Murphy, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Council for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

  
Council Sharon Murphy

*Taken, subscribed and sworn to before me the undersigned by*

Sharon Murphy of Mingo County at Gilbert, West Virginia, on this the  
23rd day of June 2009..

  
Judge Michael Thornsbury



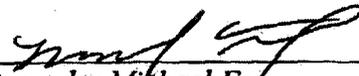
TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621

**OATH OF OFFICE AND CERTIFICATE**  
**STATE OF WEST VIRGINIA**

*State of West Virginia,*

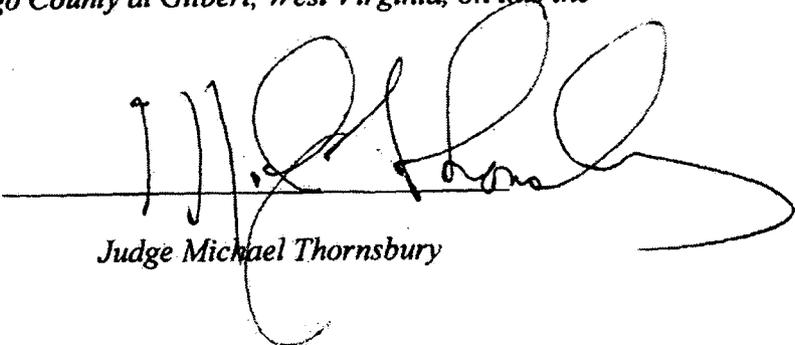
*County of Mingo, To-Wit:*

I, Michael Fox, do solemnly swear that I will support the  
Constitution of the United States and The Constitution of the State of West Virginia, and  
that I will faithfully discharge the duties of my office as the Recorder for the Town of  
Gilbert to the best of my skill and judgment, so help me God.

  
Recorder Michael Fox

Taken, subscribed and sworn to before me the undersigned by Michael Fox

of Mingo County at Gilbert, West Virginia, on this the  
23<sup>rd</sup> day of June 2009..

  
Judge Michael Thornsby

"RESOLUTION ESTABLISHING RULES BY WHICH THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS AND THE 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 Council of the Town of Gilbert, Mingo County, West Virginia:

Section 1. Statutory Mandate for These 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.

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 time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(B) The Council of the Town of Gilbert, Mingo County, West Virginia (herein called the "Council"), is a governing body 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 Rules of Procedure of the Council.

Section 3. Rules. The following are hereby promulgated and established as 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 where notices customarily are posted a notice setting forth the times and places of the Council's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality sufficient to withstand deterioration throughout the year to which it applies. Additional copies of the notice shall be delivered to the Recorder.

Also immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, distribute to each of the newspapers, television stations, radio stations and other news media listed below a notice identical to that posted.

| <u>News Media</u>     | <u>Address</u>                              |
|-----------------------|---|
| Williamson Daily News | 100 East 3rd Avenue<br>Williamson, WV 25661 |
| WBTH-AM               | P. O. Box 261<br>Williamson, WV 25661       |
| WXCC-FM               | P. O. Box 261<br>Williamson, WV 25661       |
| WCHS-TV               | 911 5th Avenue<br>Huntington, WV 25701      |
| WSAZ-TV               | 645 5th Avenue<br>Huntington, WV 25701      |
| WOWK-TV               | P. O. Box 13<br>Huntington, WV 25706-0013   |

**[PLEASE REVIEW THE LIST ABOVE AND FORWARD  
ANY ADDITIONS OR DELETIONS TO OUR ATTENTION.]**

|                   |                                       |
|-------------------|---------------------------------------|
| The Gilbert Times | P.O. Box 1135<br>Gilbert, W.Va. 25621 |
|-------------------|---------------------------------------|

The Gilbert Times was added by council after reviewing the other news media above.

[The remainder of this page is intentionally left blank.]

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 June 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, television stations, radio stations and other news media that customarily cover news of the area served by the Council.

In the event of any modification in the time or place of a regularly scheduled meeting of the Council, notice of such modification shall 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, not less than three (3) days prior to the date of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the date of such rescheduled meeting, a notice setting forth such modification in the time or place of such regularly scheduled meeting. A copy of such notice shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of a regularly scheduled meeting and of the time and place for the continuation or reconvening thereof publicly given during such regularly scheduled meeting shall be adequate notice to the public and news media of the time and place thereof.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule No 2. Notice of Special Meeting. Not less than three (3) but not more than eight (8) days prior to the date set for any special meeting of the Council, the Council shall instruct the Recorder to, and the Recorder shall, post on the door of the regular meeting place of the Council, and at such other place, if any, where notices customarily are posted a notice setting forth the 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 three (3) days prior to the date set for such special meeting, the Recorder shall distribute to each of the newspapers, television stations, radio stations and other news media listed in Rule No. 1 hereof a notice identical to that posted. Amendments made to such 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.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of any special meeting and of the time and place for the continuation or reconvening thereof publicly given during such special meeting shall be adequate notice to the public and news media of the time and place thereof, the purpose or purposes therefor remaining the same.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule No. 3. Emergency Meeting. A meeting as of the Council may be held without the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of any 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.

Section 4. 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 5. Effective Time. This Resolution and the rules promulgated hereby shall take effect immediately upon the adoption hereof.

Introduced at Council Meeting: \_\_\_\_\_

Adopted by Council: March 15, 1994

Mayor

  
\_\_\_\_\_

[SEAL]

Recorder

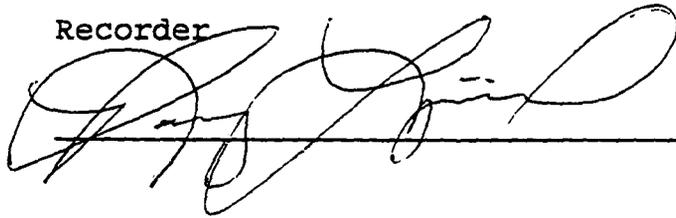
  
\_\_\_\_\_

ABB04E1E

FIRST READING Monday 2-21-94

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**Entered: November 7, 2008**

CASE NO. 08-0411-W-CN

TOWN OF GILBERT WATER WORKS,  
a municipal utility, Gilbert, Mingo County,

Application for a certificate of convenience and necessity to upgrade and expand service to approximately 172 customers in Slabtown, Tamcliff and Painter Blossom along Routes 80 and 80/1 north of the Town of Gilbert in Mingo County.

**FINAL**

11/27/2008

**RECOMMENDED DECISION**

On March 21, 2008, the Town of Gilbert Water Works (Gilbert) filed with the Public Service Commission an application for a certificate of public convenience and necessity to upgrade and expand service to approximately 172 customers in the Slabtown, Tamcliff and Painter Blossom areas along Routes 80 and 80/1 north of the Town of Gilbert, in Mingo County. The project required no additional rate increase, since Gilbert recently had passed a rate ordinance.

Also on March 21, 2008, the Commission directed Gilbert to publish a Notice of Filing providing that, if no protest was filed within thirty days after the date of publication, the Commission may waive formal hearing and grant the application based upon its review of the evidence submitted with the application.

By the April 4, 2008 Commission Referral Order, the Commission referred this matter to the Division of Administrative Law Judges for decision no later than October 17, 2008, if a timely protest was received, and no later than August 4, 2008, if no such protest was filed.

On April 25, 2008, Staff Attorney Carrie F. DeHaven filed an Initial Joint Staff Memorandum, attaching the April 24, 2008 Initial Internal Memorandum from Technical Analyst James Spurlock, Engineering Division, and Utilities Analyst Michael Quinlan, Water and Wastewater Division, reporting that, since the Town has been operating at a deficit, it had passed an ordinance raising its rates. See, Case No. 08-0786-W-MA, *Town of Gilbert Water Works*. Staff opined that Gilbert's rates

WKM

must to be sufficient to cover the project-related expenses and to provide debt coverage of at least 115%.

On May 6, 2008, Gilbert filed further information.

On June 9, 2008, Administrative Law Judge Sunya Anderson issued a Procedural Order noting that the decision due date could not yet be determined because the affidavit of publication of the Notice of Filing had not been filed. It was therefore ordered "that the Town of Gilbert Water Works file an affidavit of publication of the Notice of Filing immediately, if the Town has caused said notice to be published, and that the Town cause the notice to be published immediately and file the affidavit of publication as soon as possible, if the Town has not caused the notice to be published." The June 9, 2008 Order also directed that Staff file its final memorandum no later than June 19, 2008.

On June 16, 2008, Gilbert moved to toll the statutory deadline by forty-five days, indicating that its rates at issue in Case No. 08-0786-W-MA were designed to provide adequate revenue to cover increased costs arising from this matter.

On June 18, 2008, the Commission tolled the statutory deadline and extended all other deadlines by forty-five days.

On July 22, 2008, Gilbert filed a publication affidavit. However, this publication dealt with the rate increase in Case No. 08-0786-W-MA, not the instant certificate case.

On July 28, 2008, Gilbert filed further information.

On August 4, 2008, Staff Attorney DeHaven filed the Final Joint Staff Memorandum, attaching the August 4, 2008 Final Internal Memorandum from Utilities Analyst Nathan Nelson, Water and Wastewater Division, and from Technical Analyst Spurlock. Together, these Memoranda comprise Commission Staff's final substantive recommendation. The project, which is comprised primarily of approximately 16,000 linear feet of water lines and a 100,000-gallon water storage tank, will serve approximately 172 new customers in the communities of Slabtown, Tamcliff and Painter Blossom, which are north of Gilbert in Mingo county, who have inadequate, unreliable and unsafe water supplies, i.e., cisterns, springs and private wells. The groundwater supply is contaminated from poorly constructed or failing individual private septic systems. The new tank will provide a more reliable water supply for the Town of Gilbert and its customers. If project funds are available, Gilbert also will add an extra 4,500 linear feet of line to serve an additional 20 customers and will replace 300 existing water meters with radio-read water meters. Gilbert estimated that the project will cost approximately \$2,300,000, to be funded with a \$1,500,000 Appalachian Regional Commission (ARC) grant, a \$328,000 United States Department of Agriculture, Rural Utilities Service (RUS) grant and a \$472,000 RUS loan at an interest rate of 4.125% for a 40-year term, with interest only due for the first two years of the term. The debt service requirement for the remaining 38 years will be \$24,648,

plus Gilbert will be required to fund a renewal and replacement reserve by depositing 10% of the annual payment, or \$2,465. Staff recommended that the Commission grant the application and approve the project and its funding, contingent upon sufficient rates being approved in Case No. 08-0786-W-MA. Since the project has been approved by the West Virginia Infrastructure and Jobs Development Council (IJDC), Staff recommended that Gilbert seek additional Commission approval prior to commencing construction should the plans, scope or financing change which would affect rates. Any changes not affecting rates must be verified by a certified public accountant. Gilbert should submit the bid tabulations as soon as they become due and submit a copy of the certificate of substantial completion as soon as it is available.

Responding to all of the above, by the August 7, 2008 Procedural Order, Judge Anderson emphasized that the publication affidavit filed on July 22, 2008, is not an affidavit of publication of the Notice of Filing, i.e., it is an affidavit of publication of a Notice of Proposed Water Rate Increase. Judge Anderson directed that Gilbert file the affidavit of publication of the Notice of Filing.

On September 4, 2008, Gilbert submitted a letter indicating that the Notice of Filing had not been published, but it would be published by September 9, 2008.

On October 10, 2008, Gilbert submitted the publication affidavit to the ALJ indicating that the Notice of Filing was published on September 23 and 30, 2008, in the *Williamson Daily News*, a newspaper published and generally circulated in Mingo County. The thirty-day protest period expired on October 30, 2008, without any protest to the certificate application being filed.

### DISCUSSION

Having considered all of the above, since no dispute remains to be resolved in this proceeding, as evidenced by no protest being filed and Staff recommending approval, the ALJ will consider the parties to have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since Gilbert published the Notice of Filing and no one protested the filing; since the project will serve approximately 172 new customers in the communities of Slabtown, Tamcliff and Painter Blossom, which are north of Gilbert in Mingo county, who have inadequate, unreliable and unsafe water supplies, i.e., cisterns, springs and private wells; since the groundwater supply is contaminated from poorly constructed or failing individual private septic systems; since the new tank will provide a more reliable water supply for the Town of Gilbert and its customers; and since Gilbert has obtained favorable financing for the project, including \$1,828,000 in grants, the public convenience and necessity require the project. The proposed financing for the project should be approved. The other Staff recommendations also should be approved.

## FINDINGS OF FACT

1. The Town of Gilbert Water Works filed an application for a certificate of public convenience and necessity with the Public Service Commission to upgrade and expand service to approximately 172 customers in the Slabtown, Tamcliff and Painter Blossom areas along Routes 80 and 80/1 north of the Town of Gilbert, in Mingo County. The project required no additional rate increase, since Gilbert recently had passed a rate ordinance. (See, March 21, 2008 application).
2. Gilbert submitted a publication affidavit demonstrating that the Notice of Filing was published on September 23 and 30, 2008, in the *Williamson Daily News*, a newspaper published and generally circulated in Mingo County. (See, October 10, 2008 filing).
3. The thirty-day protest period expired on October 30, 2008, without any protest to the certificate application being filed. (See, Commission's file).
4. The project, which is comprised primarily of approximately 16,000 linear feet of water lines and a 100,000-gallon water storage tank, will serve approximately 172 new customers in the communities of Slabtown, Tamcliff and Painter Blossom, which are north of Gilbert in Mingo county, who have inadequate, unreliable and unsafe water supplies, i.e., cisterns, springs and private wells. The groundwater supply is contaminated from poorly constructed or failing individual private septic systems. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).
5. The new tank will provide a more reliable water supply for the Town of Gilbert and its customers. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).
6. If project funds are available, Gilbert also will add an extra 4,500 linear feet of line to serve an additional 20 customers and will replace 300 existing water meters with radio-read water meters. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).
7. The project will cost approximately \$2,300,000, to be funded with a \$1,500,000 ARC grant, a \$328,000 RUS grant and a \$472,000 RUS loan at an interest rate of 4.125% for a 40-year term, with interest only due for the first two years of the term. The debt service requirement for the remaining 38 years will be \$24,648, plus Gilbert will be required to fund a renewal and replacement reserve by depositing 10% of the annual payment, or \$2,465. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).
8. Staff recommended that the Commission grant the application and approve the project and its funding, contingent upon sufficient rates being approved in Case No. 08-0786-W-MA. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).

9. Staff recommended that Gilbert seek additional Commission approval prior to commencing construction should the plans, scope or financing change which would affect rates. Any changes not affecting rates must be verified by a certified public accountant. Gilbert should submit the bid tabulations as soon as they become due and submit a copy of the certificate of substantial completion as soon as it is available. (See, Final Joint Staff Memorandum, with attachments, filed August 4, 2008).

10. The ALJ takes administrative notice that the Commission has approved rates to cover the project revenue requirements, as set forth in the following ordering paragraph in the rate case referenced by Commission Staff:

IT IS FURTHER ORDERED that the rates and charges contained in Appendix B be, and hereby are, approved for all water service rendered by the Town of Gilbert on and after the date that the water mainline extension project which is pending before the Commission for a certificate in Case No. 08-0411-W-CN, *Town of Gilbert Water Works* is certified as substantially complete.

(See, Recommended Decision in Case No. 08-0786-W-MA, *Town of Gilbert*, entered on August 28, 2008, final on September 17, 2008).

### **CONCLUSIONS OF LAW**

1. The public convenience and necessity require the proposed project.
2. The proposed financing for the project should be approved.
3. The Commission has approved rates in Case No. 08-0786-W-MA that are sufficient, but not more than sufficient, to support the proposed project.
4. Should the scope, plans or financing for the project change, Gilbert must obtain prior Commission approval before commencing construction. Changes in project costs do not require separate approval if those changes do not affect rates and Gilbert submits an affidavit from a certified public accountant to this effect.

### **ORDER**

IT IS, THEREFORE, ORDERED that the application for a certificate of public convenience and necessity filed with the Commission on March 21, 2008, by the Town of Gilbert Water Works, pursuant to *West Virginia Code* §24-2-11, to upgrade and expand service to approximately 172

customers in the Slabtown, Tamcliff and Painter Blossom areas along Routes 80 and 80/1 north of the Town of Gilbert, in Mingo County, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a \$1,500,000 Appalachian Regional Commission grant, a \$328,000 Rural Utilities Service grant and a \$472,000 Rural Utilities Service loan at an interest rate of 4.125% for a 40-year term, with interest only due for the first two years of the term, be, and hereby is, approved.

IT IS FURTHER ORDERED that, should the scope, plans or financing for the project change, Gilbert must obtain prior Commission approval before commencing construction. Changes in project cost do not require separate approval if those changes do not affect rates and Gilbert submits an affidavit from a certified public accountant to this effect.

IT IS FURTHER ORDERED that the Gilbert submit a copy of the bids to the Commission, making the bids a part of the Commission's file in this case, as soon as the bids are tabulated.

IT IS FURTHER ORDERED that Gilbert notify the Commission when the project engineer has performed the substantial completion inspection.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, Gilbert comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

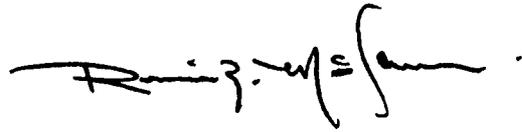
IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all parties of record by United States Certified Mail, return receipt requested.

Leave hereby is 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 Recommended Decision 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 Recommended Decision 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 recommended decision by filing an appropriate petition in writing with the Executive 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 recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



**Ronnie Z. McCann**  
Deputy Chief Administrative Law Judge

RZM:s

08041 lab.wpd

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA

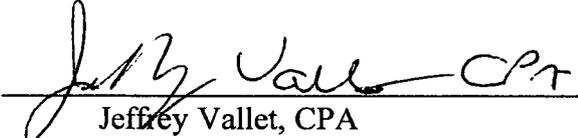
CASE NO. 08 - 0411 - W - CN

TOWN OF GILBERT  
Gilbert, West Virginia

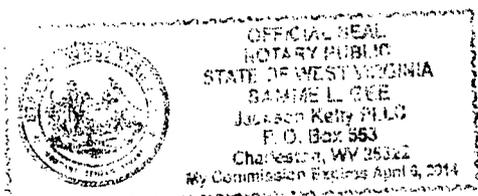
State of West Virginia  
County of Kanawha, to wit:

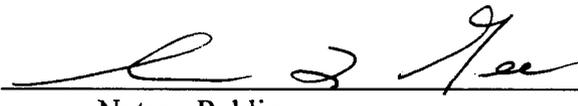
**AFFIDAVIT**

I, **Jeffrey Vallet, CPA**, after making an oath of affirmation to tell the truth, say that the information I sponsored in my Rule 42 exhibit and subsequent filings, in Case No. 08 - 0411 - W - CN, was based solely upon the information provided to me by The Town of Gilbert and Rick Roberts, PE of E. L. Robinson Engineering Co. (Town's Consulting Engineer), relating to the proposed water project. Upon review of additional information provided regarding the project costs/bid overage of **\$589,478**, and based on all the information that has been provided, to date, it is my opinion that the rates and charges will be sufficient to provide revenues which, together with other revenues of the system, will allow for me to provide the CPA Certification of the water rates as currently provided by the Public Service Commission to allow the project's financial closings to proceed.

  
Jeffrey Vallet, CPA

This Affidavit was sworn to or affirmed before me this 28<sup>th</sup> day of July, 2009.



  
Notary Public

RECEIVED  
09 JUL 29 AM 11:02  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE



**United States Department of Agriculture  
Rural Development  
West Virginia State Office**

April 11, 2007

~~The Honorable John W. White  
Town of Gilbert  
P.O. Box 188  
Gilbert, WV 25621~~

Dear Mayor White:

This letter, with Attachments 1 through 14 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$472,000, an RUS grant in the amount of \$328,000, and other funding in the amount of \$1,500,000, for a total project cost of \$2,300,000. The other funding is planned in the form of a grant from the HUD Small Cities Block Grant Program.

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

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

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist for the Town of Gilbert (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)

75 High Street Federal Building, Suite 320, Morgantown, WV 26505-7500  
Phone: (304) 284-4860 • Fax: (304) 284-4893 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 1994) (Accountant Copy)
- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement "
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - Water Users Agreement (Applicant and Attorney Copies)
- Attachment No. 12 - Declination Statement (Applicant and Attorney Copies)
- Attachment No. 13 - Sample Credit Agreement (Applicant Copy)
- Attachment No. 14 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

- 1. Loan Repayment** – The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.125% interest rate and a monthly amortization factor of .00435, which provides for a monthly payment of \$2,054. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.
- 2. Security** – The loan must be secured by a statutory lien of first priority, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780- 12 and RUS Bulletin 1780-27 which are mentioned later.
- 3. Users** – This conditional commitment is based upon you providing evidence that you will have at least 448 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 138 signed user agreements and a signed certification from you that identifies and

attests to the number of users actually connected to and using the Town's existing water system, which is to be partially replaced by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement will be used. Each user signing an agreement must make a user contribution of \$100. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a "Service Declination Statement." A guide "Service Declination Statement" is attached for your use. If a potential user refuses to sign either a user agreement or a declination statement, the individual making the contact for the Town should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service. Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed user agreements, (3) signed service declination statements, (4) records evidencing user contributions having been paid, (5) a map locating each potential user's property in the new service area identifying it by number, (6) a list of all signed bona fide users numbered so as to be a cross-reference with the map, and (7) a list of all declination statements numbered so as to be a cross-reference with the map.

The RUS loan and grant commitment is based on the Town providing service to one large volume user. Evidence must be provided to show this user will actually be connected to the system when it is completed and that the monthly water usage projected by the engineer for this user is reasonable. In the event this user refuses the offered service, the Town must obtain enough additional revenue (i.e., increase in user rates, sign up of an adequate number of other users, reduction in project scope to reduce debt service and O&M, etc.) to make up the projected income that would be lost by not having this user on the system.

4. Bond Counsel Services – The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services – It will be necessary for you to obtain the services of an engineer. EJCDC No. E-510, "Standard Form of Agreement between Owner and Engineer for Professional Services" (2002 Funding Agency Edition) should be

used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

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

The Accountant’s Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your Town. The attached booklets, “Government Auditing Standards (Revised 2003)” (Attachment No. 8), and RUS Bulletins 1780-30 and 1780-31 (Attachment Nos. 9 and 10) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$500,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control – Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:

- a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
  - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the Town already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
  - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.
  - e. On the day of loan closing, the Town's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the Town has already acquired real property(s) (land or facilities), the Town's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits – Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
  - Railroads
  - State Department of Health
  - Department of Environmental Protection

- Corps of Engineers
- Public Land Corporation

10. Public Service Commission Approvals – You must obtain the following from the West Virginia Public Service Commission:

- a. A Certificate of Convenience and Necessity.
- b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
- c. Approval of financing for the project's proposed financing arrangements.

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

11. Insurance and Bonding Requirements – Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:

- a. Liability Insurance – Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
- b. Workers' Compensation – In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) – All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time.

The minimum coverage acceptable to RUS once your project is in operation will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).

- d. National Flood Insurance – In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
  - i. If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.

- ii. Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.
- e. Real Property Insurance – Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications –

- a. The contract documents should consist of the following:
  - i. EJCDC Document No. C-521, 2002 Edition, “Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price” and EJCDC Document No. C-710, 2002 Edition, “Standard General Conditions of the Construction Contract – Funding Agency Edition” and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.
  - ii. “RUS Supplemental General Conditions.”

RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance,” is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

- b. The contract documents must provide, as a minimum, the following insurance:
  - i. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the Town and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
  - ii. Builder’s Risk Insurance – On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.

iii. Workers' Compensation – In accordance with applicable State laws.

- c. The contract documents and final plans and specifications must be submitted to RUS for approval.
- d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. Interim Financing – Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No. 13).
14. Disbursement of Funds – The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your Town, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Public Bodies – Interest earned on grant funds in excess of \$100 per year will be submitted to RUS at least quarterly as required in 7 CFR 3016.

The Town will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

The Town must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. Other Project Funds – Prior to advertisement for construction bids, you must provide evidence showing the approval of any other project funds. This evidence should include a copy of the funding award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the other project funds are available for expenditure. This evidence should consist of at least a letter from the funding agency stating the funds are available for expenditure.
16. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form RD 1940-1 - "Request for Obligation of Funds"  
 RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"  
 RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"  
 Form RD 400-1 - "Equal Opportunity Agreement"  
 Form RD 400-4 - "Assurance Agreement"  
 Form AD 1047 - "Certification Regarding Debarment - Primary"  
 Form AD 1049 - "Certification Regarding Drug-Free Workplace"  
 Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"  
 FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"  
 Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)  
 Certification of Compliance  
 Form RD 1942-46, "Letter of Intent to Meet Conditions"

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

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

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it

be revised or replaced.

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

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Robert M. Steptoe, III'. The signature is fluid and cursive, with a long horizontal stroke at the end.

ROBERT M. STEPTOE, III  
State Director

Enclosures

cc: Rural Development Specialist  
Beckley, WV

Eric Coberly, P.E.  
E. L. Robinson  
5088 Washington Street West  
Charleston, WV 25313

Vallet & Associates, AC  
401 Cole Street  
P.O. Box 927  
Logan, WV 25601

WV Development Office  
ATTN: Tracy Rowan  
Capitol Complex, Building G  
Room 553, 1900 Kanawha Blvd. E.  
Charleston, WV 25305-0311

Project Construction Budget

| <u>PROJECT COST</u> | <u>SCBG</u>         | <u>RUS GRANT</u>  | <u>RUS LOAN</u>   | <u>TOTAL</u>        |
|---------------------|---------------------|-------------------|-------------------|---------------------|
| CONSTRUCTION        | \$ 1,155,400        | \$ 259,800        | \$ 350,100        | \$ 1,765,300        |
| CONST. CONTINGENCY  | \$ 75,300           | \$ 16,900         | \$ 22,700         | \$ 120,450          |
| LAND & RIGHTS       | \$ 3,300            | \$ 700            | \$ 1,000          | \$ 5,000            |
| LEGAL FEES          | \$ 6,500            | \$ 1,500          | \$ 2,000          | \$ 10,000           |
| BOND COUNSEL        | \$ 9,800            | \$ 2,200          | \$ 3,000          | \$ 15,000           |
| ACCOUNTING          | \$ 4,900            | \$ 1,100          | \$ 1,500          | \$ 1,950            |
| ENGINEERING FEES    | \$ 171,500          | \$ 38,600         | \$ 51,900         | \$ 262,000          |
| Basic - \$120,000   |                     |                   |                   |                     |
| Insp. - \$97,000    |                     |                   |                   |                     |
| Special - \$45,000  |                     |                   |                   |                     |
| INTEREST            |                     |                   | \$ 30,000         | \$ 30,000           |
| ADMINISTRATION      | \$ 41,000           |                   |                   | \$ 41,000           |
| PROJECT CONTG.      | \$ 32,300           | \$ 7,200          | \$ 9,800          | \$ 49,300           |
| <b>TOTAL</b>        | <b>\$ 1,500,000</b> | <b>\$ 328,000</b> | <b>\$ 472,000</b> | <b>\$ 2,300,000</b> |

Rates

Available for general domestic, commercial, and industrial service.

|       |        |           |         |               |
|-------|--------|-----------|---------|---------------|
| First | 2,000  | gallons @ | \$ 8.16 | per M gallons |
| Next  | 2,000  | gallons @ | \$ 6.53 | per M gallons |
| Next  | 6,000  | gallons @ | \$ 3.26 | per M gallons |
| Next  | 10,000 | gallons @ | \$ 2.77 | per M gallons |
| Over  | 20,000 | gallons @ | \$ 2.44 | per M gallons |

Minimum Charge

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

|             |       |             |           |
|-------------|-------|-------------|-----------|
| 5/8" x 3/4" | meter | \$ 16.32    | per month |
| 3/4"        | meter | \$ 24.48    | per month |
| 1"          | meter | \$ 40.80    | per month |
| 1 1/2"      | meter | \$ 81.60    | per month |
| 2"          | meter | \$ 130.56   | per month |
| 3"          | meter | \$ 244.80   | per month |
| 4"          | meter | \$ 408.00   | per month |
| 6"          | meter | \$ 816.00   | per month |
| 8"          | meter | \$ 1,305.60 | per month |

Minimum Monthly Bill \$ 16.32 for 2,000 gallons

Delayed Payment Penalty

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

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

Connection Charge

Prior to Construction - \$100.00

After start of construction, there shall be a charge of \$100.00 or the cost of connection, whichever is greater

Reconnection Charge

\$25.00

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

Attachment No. 1 to Letter of Conditions  
 For: Town of Gilbert  
 Date: April 11, 2007

*Town of Gilbert*  
**USE AND INCOME ANALYSIS**  
 Existing System - Proposed Rates

| Blocking                | Cust.         | Gal/<br>Mo.     | Minimum<br>Bills    | First<br>2,000      | Next<br>2,000       | Next<br>6,000      | Next<br>10,000     | Over<br>20,000     | TOTAL<br>REVENUE    |
|-------------------------|---------------|-----------------|---------------------|---------------------|---------------------|--------------------|--------------------|--------------------|---------------------|
| 0 - 2000                | 151           | 138.86          | 151                 |                     |                     |                    |                    |                    |                     |
| 2001 - 4000             | 88            | 262.07          |                     | 176.00              | 86.07               |                    |                    |                    |                     |
| 4001 - 10000            | 52            | 283.32          |                     | 103.33              | 103.38              | 76.61              |                    |                    |                     |
| 10001 - 20000           | 11            | 153.81          |                     | 22.01               | 22.04               | 66.00              | 43.76              |                    |                     |
| Over 20000              | 8             | 289.25          |                     | 15.37               | 15.38               | 45.99              | 76.65              | 135.86             |                     |
| <b>Monthly Total</b>    | <b>310.00</b> | <b>1,127.31</b> | <b>151.00</b>       | <b>316.71</b>       | <b>226.87</b>       | <b>188.60</b>      | <b>120.41</b>      | <b>135.86</b>      |                     |
| <b>Proposed Rates</b>   |               |                 | <b>\$ 16.32</b>     | <b>\$ 8.16</b>      | <b>\$ 6.53</b>      | <b>\$ 3.26</b>     | <b>\$ 2.77</b>     | <b>\$ 2.44</b>     |                     |
| <b>Monthly Revenues</b> |               |                 | <b>\$ 2,464.32</b>  | <b>\$ 2,584.35</b>  | <b>\$ 1,481.46</b>  | <b>\$ 614.84</b>   | <b>\$ 333.54</b>   | <b>\$ 331.50</b>   | <b>\$ 7,810.00</b>  |
| <b>Annual Revenues</b>  |               |                 | <b>\$ 29,571.84</b> | <b>\$ 31,012.24</b> | <b>\$ 17,777.53</b> | <b>\$ 7,378.03</b> | <b>\$ 4,002.43</b> | <b>\$ 3,977.98</b> | <b>\$ 93,720.06</b> |

|                                |                    |
|--------------------------------|--------------------|
| <b>Annual Revenue</b>          | <b>\$93,720.06</b> |
| <b>Adjustment Factor</b>       | <b>1.063307</b>    |
| <b>Adjusted Annual Revenue</b> | <b>\$99,853.20</b> |

*Town of Gilbert*  
**USE AND INCOME ANALYSIS**  
**"IDENTIFIED EXTENSION AREAS"**

| <u>Blocking</u>         | <u>Cust.</u> | <u>Gal/<br/>Mo.</u> | <u>Minimum<br/>Bills</u> | <u>FIRST<br/>2,000</u> | <u>NEXT<br/>2,000</u> | <u>OVER<br/>4,000</u> | <u>TOTAL<br/>REVENUE</u> |
|-------------------------|--------------|---------------------|--------------------------|------------------------|-----------------------|-----------------------|--------------------------|
| 0 - 2000                | 0            | 0.00                | 0                        | 0                      | 0                     |                       |                          |
| 2001 - 4000             | 138          | 552.00              |                          | 276.00                 | 276.00                |                       |                          |
| Over 4000               | 0            |                     |                          |                        |                       |                       |                          |
| <b>Monthly Total</b>    | <b>138</b>   | <b>552.00</b>       | <b>0</b>                 | <b>276.00</b>          | <b>276.00</b>         | <b>0</b>              |                          |
| <b>Proposed Rates</b>   |              |                     | <b>\$ 16.32</b>          | <b>\$ 8.16</b>         | <b>\$ 6.53</b>        |                       |                          |
| <b>Monthly Revenues</b> |              |                     | <b>\$ -</b>              | <b>\$ 2,252.16</b>     | <b>\$ 1,802.28</b>    |                       | <b>\$ 4,054.44</b>       |
| <b>Annual Revenues</b>  |              |                     | <b>\$ -</b>              | <b>\$ 27,025.92</b>    | <b>\$ 21,627.36</b>   |                       | <b>\$ 48,653.28</b>      |

138 is 80% of potential customers

It is assumed that all new customers will use an average of 4,000 per month.

*Town of Gilbert*  
**OPERATING BUDGET**

**OPERATING INCOME**

|                               |            |                   |
|-------------------------------|------------|-------------------|
| Metered Sales                 | \$ 148,306 |                   |
| Service to Justice PSD        | \$ 24,403  |                   |
| Other Income                  | \$ 6,149   |                   |
| <b>TOTAL OPERATING INCOME</b> |            | <u>\$ 178,858</u> |

**NON OPERATING INCOME**

|                                   |       |              |
|-----------------------------------|-------|--------------|
| Interest income                   | \$ 92 |              |
| <b>TOTAL NON OPERATING INCOME</b> |       | <u>\$ 92</u> |

**TOTAL INCOME**

\$ 178,950

**EXPENSES**

|                       |            |                   |
|-----------------------|------------|-------------------|
| O & M                 | \$ 145,389 |                   |
| Taxes                 | \$ 5,719   |                   |
| <b>TOTAL EXPENSES</b> |            | <u>\$ 151,108</u> |

**INCOME AVAILABLE FOR D/S (A)**

\$ 27,842

**DEBT SERVICE**

|                           |           |                  |
|---------------------------|-----------|------------------|
| Existing Bond P & I (B)   |           |                  |
| Proposed Bond P & I (B)   | \$ 24,648 |                  |
| <b>TOTAL DEBT SERVICE</b> |           | <u>\$ 24,648</u> |

**DEBT SERVICE RESERVE**

|                                   |          |                 |
|-----------------------------------|----------|-----------------|
| Debt Service Reserve*             | \$ 2,465 |                 |
| <b>TOTAL DEBT SERVICE RESERVE</b> |          | <u>\$ 2,465</u> |

**SURPLUS (DEFICIT)**

\$ 729

**DEBT COVERAGE (A/B)**

\$ 1.13

\* Based on RUS loan of \$472,000 @ 4.125% for 38 years.

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

| <u>Form Number</u> | <u>Document or Action</u>                                       | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>       | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|---|----------------------|----------------------------|--------------------------|--------------------|----------------------|----------------------|
| SF 424.2           | Application for Federal Assistance                              | 3                    | 1780.31(b)                 | Applicant                |                    | Have                 | 3                    |
|                    | DUNS Number   | 1                    |                            | Applicant                |                    | Have                 | 3                    |
|                    | CAIVRS Number   | 1                    |                            | RUS                      |                    | Have                 | CPAP Form            |
|                    | Public Notice of Intent to File App./ Env. Notice               | 3                    | 1780.19(a)<br>1794         | Applicant                |                    | Have                 | 3                    |
| Bulletin 1780-22   | Applicant Eligibility Certification/ Other Credit Certification | 1                    | 1780.33(d)                 | Applicant                |                    | Have                 | 3                    |
|                    | Bond Ordn. or Resol. On Outstanding Debts                       | 1                    | 1780.33(e)                 | Applicant/<br>Attorney   |                    | N/A                  | 5                    |
|                    | Bonds or Notes Outstanding Debt                                 | 1                    | 1780.33(e)                 | Applicant/<br>Attorney   |                    | N/A                  | 2                    |
|                    | Audit for last year of operation                                | 1                    | 1780.33(e)                 | Applicant/<br>Accountant |                    | Have                 | 1                    |
|                    | Staff Review Financial Statements                               | 1                    | S.I. 1780.2                | RUS                      |                    | Have                 | 1                    |
| EJCDC No. E-510    | Agreement between Owner & Engineer                              | 3                    | 1780.39(b)                 | Applicant/<br>Engineer   |                    | Have                 | 6                    |

| Form Number                       | Document or Action  | Number Needed | Procedure Reference        | Provided By         | Target Date | Date Received | File Position |
|-----------------------------------|---|---------------|----------------------------|---------------------|-------------|---------------|---------------|
| Bulletin 1780-7 or other approved | Legal Services Agreement with Local Attorney                          | 3             | 1780.39 (b)(2)             | Applicant/ Attorney |             |               | 5             |
|                                   | Site Visit  |               | S.I. 1780-2                | RUS                 |             | Have          | 3             |
|                                   | Processing Conference   | 1             | 1780.39(a)                 | RUS                 |             |               | 3             |
|                                   | Environmental Report  | 2             | 1794                       | Applicant           |             | Have          | 3             |
|                                   | Environmental Assessment  | 2             | 1794                       | RUS/ Engineer       |             | Have          | 3             |
|                                   | FONSI/ Evidence of Publication  | 1             | Exhibit 1 RUS 1794 News Ad | RUS/ Applicant      |             | Have          | 3             |
| Bulletins 1780-2 1780-3           | Preliminary Engineering Report  | 2             | 1780.33(c)                 | Engineer            |             | Have          | 6             |
|                                   | Staff Engineer PER Review   | 1             | 1780.33(c)                 | RUS                 |             | Have          | 3             |
|                                   | Bill Analysis for existing system(s)                                  | 2             | 1780.33(c)                 | Applicant/ Engineer |             | Have          | 8             |
|                                   | Projected Bill Analysis for New Users                                 | 2             | 1780.33(c)                 | Applicant/ Engineer |             | Have          | 8             |
|                                   | Statement reporting the <u>total</u> number of <u>potential</u> users |               | 1780.33(c)                 | Applicant/ Engineer |             |               | 8             |
|                                   | Rate Tariff   | 2             | 1780.33                    | Applicant           |             | Have          | 8             |
|                                   | Applicant's IRS Tax Number(TIN)                                       | 1             | 1780.33(g)                 | Applicant           |             | Have          | 3             |

| Form Number      | Document or Action  | Number Needed | Procedure Reference | Provided By       | Target Date | Date Received | File Position |
|------------------|---|---------------|---------------------|-------------------|-------------|---------------|---------------|
|                  | Agency Determination on the Availability of "Other Credit" with Documentation | 1             | 1780.7(d)           | RUS               |             | Have          | 3             |
|                  | Documentation on Service Area   | 1             | 1780.11             | RUS               |             | Have          | 3             |
| Bulletin 1780-1  | Project Selection Criteria  | 2             | 1780.17             | RUS               |             | Have          | 1             |
|                  | Letter of Conditions  | 7             | 1780.41 (a)(5)      | RUS               |             | Have          | 3             |
| AD 1049          | Certification Regarding Drug-Free Workplace                                   | 1             | 1780.33(h)          | Applicant         |             | Have          | 5             |
|                  | Minutes Adopting Drug-Free Workplace Program                                  | 1             | LOC                 | Applicant         |             |               | 5             |
| Exhibit A / A-1  | Certifications Regarding Lobbying   | 2             | 1780.33(h)          | Applicant         |             | Have          | 2             |
| CPAP Form        | Project Information   | 3             | 1780.41(a)          | RUS               |             | Have          | 1             |
| CPAP Form        | Underwriting Information  | 3             | 1780.33(h)          | Applicant         |             | Have          | 3             |
| RD 1940-1        | Request for Obligation of Funds   | 4             | 1780.41(a)          | RUS/<br>Applicant |             | Have          | 2             |
| Bulletin 1780-12 | Association Water or Sewer System Grant Agreement                             | 2             | 1780.45(c)          | RUS/<br>Applicant |             | Have          | 2             |
| RD 1942-46       | Letter of Intent to Meet Conditions   | 2             | 1780.41 (a)(6)      | Applicant         |             | Have          | 3             |

| <u>Form Number</u> | <u>Document or Action</u>                            | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>         | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|--|----------------------|----------------------------|----------------------------|--------------------|----------------------|----------------------|
| AD 1047            | Certification Regarding Debarment (Primary)          | 1                    | 1780.33(h)                 | Applicant                  |                    | Have                 | 5                    |
|                    | Relationships/Associations with Agency Employees     | 1                    | 1780.1(f)                  | RUS                        |                    | Have                 | 3                    |
| RD 1910-11         | Applicant Certification, Federal Collection Policies | 1                    | 1780.33(h)                 | Applicant                  |                    | Have                 | 3                    |
| Bulletin 1780-27   | Loan Resolution                                      | 1                    | 1780.45 (a)(2)             | Applicant                  |                    | Have                 | 5                    |
| RD 400-1           | Equal Opportunity Agreement                          | 1                    | 1901-E                     | Applicant                  |                    | Have                 | 6                    |
| RD 400-4           | Assurance Agreement                                  | 1                    | 1901-E                     | Applicant                  |                    | Have                 | 3                    |
|                    | Legal Services Agreement with Bond Counsel           | 1                    | 1780.39 (b)(3)             | Applicant/<br>Bond Counsel |                    |                      | 5                    |
|                    | Agreement for Accounting Services                    | 1                    | 1780.39 (b)(2)             | Applicant/<br>Accountant   |                    | Have                 | 5                    |
|                    | Water Users Agreement (Copy)                         | 1                    | 1780.39 (c)(3)             | Applicant                  |                    |                      | 5                    |
|                    | Exception for Metering Devices                       | 1                    | 1780.57(m)                 | Applicant/<br>RUS          |                    |                      | 5                    |

| <u>Form Number</u> | <u>Document or Action</u>                                    | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>       | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|--|----------------------|----------------------------|--------------------------|--------------------|----------------------|----------------------|
|                    | Evidence of Users:   |                      |                            |                          |                    |                      |                      |
| 1.                 | Map of Users with each identified by number                  | 1                    | LOC                        | Applicant                |                    |                      | Separate File        |
| 2.                 | List of Signed Users Numbered to Map                         | 1                    | LOC                        | Applicant                |                    |                      | 5                    |
| 3.                 | List of Declination Statements Numbered to Map               | 1                    | LOC                        | Applicant                |                    |                      | 5                    |
| 4.                 | Evidence of Tap Fees Being Paid                              | 1                    | LOC                        | Applicant                |                    |                      | 5                    |
| 5.                 | Having Users Agreements and Declination Statements Available |                      | LOC                        | Applicant                |                    |                      |                      |
| 6.                 | Certification Relative to Existing Users                     | 1                    | LOC                        | Applicant                |                    |                      | 5                    |
|                    | Verification of Users  | 1                    | 1780.44(b)                 | RUS                      |                    |                      | 3                    |
|                    | Accountant's Certification                                   | 1                    | LOC                        | Applicant/<br>Accountant |                    |                      | 3                    |
|                    | RUS Review of Accounting Records                             | 1                    | S.I. 1780-4<br>(1)(ii)     | RUS                      |                    |                      | 3                    |
|                    | Copy of PSC Rule 42 Exhibit                                  | 1                    | State                      | Attorney/<br>Accountant  |                    |                      | 3                    |

| Form Number   | Document or Action  | Number Needed | Procedure Reference | Provided By            | Target Date | Date Received | File Position |
|---|---|---------------|---------------------|------------------------|-------------|---------------|---------------|
| Lender Agreement/<br>Bulletin<br>1780-10/<br>1780-10a | Interim Financing Documentation                                 | 1             | 1780.39(d)          | Applicant/<br>RUS      |             |               | 1             |
|   | DOH Permit  | 1             | 1780.15(d)          | Applicant              |             |               | 6             |
|   | Railroad Permit   | 1             | 1780.15(d)          | Applicant              |             |               | 6             |
|   | Public Land Corp. Permit  | 1             | 1780.15(d)          | Applicant              |             |               | 6             |
|   | Corps of Engineers Permit                                       | 1             | 1780.15(d)          | Applicant              |             |               | 6             |
|   | Dept. of Health Approval  | 1             | 1780.15(d)          | Engineer               |             |               | 6             |
|   | Dept. of Environmental Protection Permit                        | 1             | 1780.15(d)          | Engineer               |             |               | 6             |
|   | Contract Documents, Plans & Specifications                      | 2             | 1780.61(a)          | Engineer               |             |               | Separate File |
|   | Agency Determination on Procurement                             | 1             | 1780.70(d)          | RUS                    |             |               | 6             |
|   | Preliminary Bond Transcript Documents w/o Defeasance Provisions | 2             | 1780.83             | Bond Counsel           |             |               | 5             |
|   | Right-of-Way Map  | 1             | 1780.44(g)          | Engineer               |             |               | Separate File |
|   | Deeds and/or Options  |               | 1780.44.(g)         | Applicant/<br>Attorney |             |               | 5             |
| RD<br>1927-9  | Preliminary Title Opinion                                       | 1             | 1780.44 (g)(2)      | Applicant/<br>Attorney |             |               | 5             |

| <u>Form Number</u> | <u>Document or Action</u>  | <u>Number Needed</u> | <u>Procedure Reference</u>            | <u>Provided By</u>                     | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|--|----------------------|---------------------------------------|--|--------------------|----------------------|----------------------|
|                    | Narrative<br>Opinion from<br>Attorney                                      | 1                    | 1780.44(g)                            | Attorney                               |                    |                      | 5                    |
|                    | Waiver of<br>Title Defects<br>Letter                                       | 1                    | 1780.44(g)                            | RUS                                    |                    |                      | 5                    |
| RD<br>442-22       | Opinion of<br>Counsel<br>Relative to<br>R/Ways                             |                      | 1780.44<br>(g)(1)                     | Attorney                               |                    |                      | 5                    |
|                    | Review of<br>Outstanding<br>Judgment                                       | 1                    | 1780.7(g)                             | RUS/<br>Attorney                       |                    |                      | 3                    |
|                    | Evidence of<br>"Other<br>Funds"  | 1                    | 1780.44(f)                            | Applicant                              |                    |                      | 2                    |
| SF 3881            | Electronic Funds<br>Transfer<br>Payment<br>Enrollment<br>Form              | 1                    | 31 CFR 208                            | Applicant/<br>Financial<br>Institution |                    |                      | 2                    |
|                    | Positive Pro-<br>gram to En-<br>courage Con-<br>nections when<br>Completed | 1                    | 1780.39<br>(c)(5)                     | Applicant                              |                    |                      | 5                    |
|                    | Documenta-<br>tion Relative<br>to Health or<br>Sanitary<br>Hazards         | 1                    | 1780.1<br>(c)(1)<br>1780.13<br>(b)(1) | RUS/State<br>Health<br>Department      |                    |                      | 2                    |
|                    | PSC<br>Approval  | 1                    | 1780.15(b)                            | Applicant/<br>Attorney                 |                    |                      | 6                    |
|                    | Bid<br>Tabulation  | 1                    | 1780.61(b)                            | Engineer                               |                    |                      | 6                    |
|                    | OGC Closing<br>Instructions  | 1                    | 1780.44(h)                            | RUS                                    |                    |                      | 5                    |
|                    | S/O Closing<br>Instructions  | 1                    | 1780.44(h)                            | RUS                                    |                    |                      | 5                    |

| <u>Form Number</u> | <u>Document or Action</u>   | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>            | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|---|----------------------|----------------------------|-------------------------------|--------------------|----------------------|----------------------|
| RD<br>1927-10      | Final Title<br>Opinion  | 1                    | 1780.44<br>(g)(2)          | Applicant/<br>Attorney        |                    |                      | 5                    |
|                    | Bond Tran-<br>script Docu-<br>ments w/o<br>Defeasance<br>Provisions | 3                    | 1780.83                    | Bond<br>Counsel               |                    |                      | Separate<br>File     |
| RD<br>400-8        | Compliance<br>Review  | 1                    | 1780.44(c)                 | RUS                           |                    |                      | 5                    |
|                    | Liability<br>Insurance  | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
|                    | Workers'<br>Compensation<br>Certificate                             | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
|                    | Flood Insur-<br>ance Policy   | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
| 440-24             | Fidelity<br>Bond  | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
| 1924-16            | Record of Pre-<br>Construction<br>Conference                        | 1                    | 1780.76(a)                 | RUS/<br>Engineer              |                    |                      | 6                    |
| AD 1048            | Certification<br>Regarding<br>Debarment<br>(Contractor)             | 1 each               | 1780.33(h)                 | All<br>Appropriate<br>Vendors |                    |                      | 5                    |
|                    | OGC Final<br>Opinion  | 1                    | 1780.45(g)                 | RUS                           |                    |                      | 5                    |

**Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants\***

**§1780.80 General.**

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

**§1780.81 Policies related to use of bond counsel.**

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

**§1780.82 [Reserved]**

**§1780.83 Bond transcript documents**

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) Monthly payments. Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

**§1780.90 Multiple advances of Agency funds using temporary debt instruments.**

When none of the instruments described in §1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (a) The date from which each advance will bear interest;
- (b) The interest rate as determined by §1780.13;
- (c) A payment schedule providing for interest on outstanding principal at least annually; and
- (d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

**§§1780.91 - 1780.93 [Reserved]****§1780.94 Minimum bond specifications.**

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

- (a) Type and denominations. Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.
- (b) Bond registration. Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

**(c) Size and quality.** Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

**(d) Date of bond.** Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

**(e) Payment date.** Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

**(1)** If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

**(2)** The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

**(3)** If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

**(f) Extra payments.** Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

**(1)** For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

**(2)** For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

**(3)** For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

**(4)** For assessment bonds, see paragraph (k) of this section.

**(g)** The place of payments on bonds purchased by the Agency will be determined by the Agency.

**(h) Redemptions.** Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) Precautions. The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in RUS Bulletins 1780-27 or 1780-28.  
*[Revision 2, 06/04/99]*

(4) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) Assessment bonds. When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) Multiple debt instruments. The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

**RUS Instruction 1780**

**§1780.95 Public bidding on bonds.**

**Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.**

**§§1780.96 - 1780.100 [Reserved]**



**United States Department of Agriculture  
Rural Development  
West Virginia State Office**

July 2, 2009

The Honorable Vivian Livingood  
Mayor Town of Gilbert  
P.O. Box 188  
Gilbert, WV 25621-0188

RE: Amendment No. 1 to  
Letter of Conditions

Dear Mayor Livingood:

This letter, with Attachment No. 1 amends the letter of conditions dated April 11, 2007 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grants will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$472,000, an initial RUS grant in the amount of \$328,000, a subsequent RUS grant in the amount of \$589,478 and other funding in the amount of \$1,500,000, for a total project cost of \$2,889,478. The other funding is planned in the form of a grant from the Appalachian Regional Commission.

Subject to the requirements noted herein, all of the conditions of the April 11, 2007 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

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

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

The conditions referred to above are as follows:

1. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

Federal Building • 75 High Street • Suite 320 • Morgantown, WV 26705-7500  
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836  
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

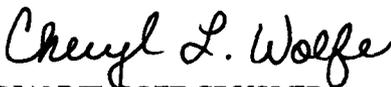
"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"  
Form 1940-1 - "Request for Obligation of Funds"  
Form RD 1942-46 - "Letter of Intent to Meet Conditions"

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

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

Sincerely,

  
for DIANNE GOFF CRYSLER  
Acting State Director

Enclosures

cc: Community Programs Specialist, Cross Lanes

Randall Lewis  
E.L. Robinson  
5088 Washington Street East  
Charleston, WV 25313

Vallet and Associates  
401 Cole Street  
P.O. Box 927  
Logan, West Virginia 25601

Samme L. Gee, Esq.  
Jackson Kelly PLLC  
1600 Laidley Tower  
P.O. Box 553  
Charleston, WV 25322

Attachment No.1 to Amended Letter of Conditions  
 For: Town of Gilbert - Revised Slabtown Budget  
 Date: July 2, 2009

**PROJECT CONSTRUCTION BUDGET**  
*Town of Gilbert/ Slabtown Water Project*

| <u>PROJECT COST</u>   | <u>RUS GRANT</u>  | <u>RUS LOAN</u>   | <u>SUBSEQUENT<br/>RUS GRANT</u> | <u>ARC</u>         | <u>TOTAL</u>        |
|-----------------------|-------------------|-------------------|---------------------------------|--------------------|---------------------|
| CONSTRUCTION          | \$ 259,800        | \$ 350,100        | \$ 543,305                      | \$ 1,155,400       | \$ 2,308,605        |
| CONST. CONTINGENCY    | \$ 16,900         | \$ 22,700         | \$ 38,673                       | \$ 75,300          | \$ 153,573          |
| LAND & RIGHTS         | \$ 700            | \$ 1,000          | \$ 2,500                        | \$ 3,300           | \$ 7,500            |
| LEGAL FEES            | \$ 1,500          | \$ 2,000          | \$ 5,000                        | \$ 6,500           | \$ 15,000           |
| BOND COUNSEL          | \$ 2,200          | \$ 3,000          |                                 | \$ 9,800           | \$ 15,000           |
| ACCOUNTING            | \$ 1,100          | \$ 1,500          |                                 | \$ 4,900           | \$ 7,500            |
| ENGINEERING FEES      | \$ 38,600         | \$ 51,900         |                                 | \$ 171,500         | \$ 262,000          |
| Basic - \$120,000     |                   |                   |                                 |                    |                     |
| Inspection - \$97,000 |                   |                   |                                 |                    |                     |
| Special - \$45,000    |                   |                   |                                 |                    |                     |
| INTEREST              |                   | \$ 30,000         |                                 |                    | \$ 30,000           |
| ADMINISTRATION        |                   |                   |                                 | \$ 41,000          | \$ 41,000           |
| PROJECT CONTG.        | \$ 7,200          | \$ 9,800          |                                 | \$ 32,300          | \$ 49,300           |
| <b>TOTAL</b>          | <b>\$ 328,000</b> | <b>\$ 472,000</b> | <b>\$ 589,478</b>               | <b>\$1,500,000</b> | <b>\$ 2,889,478</b> |

**Rates**

Available for general domestic, commercial industrial and sales for resale water service.

|          |        |           |        |               |
|----------|--------|-----------|--------|---------------|
| First    | 2,000  | gallons @ | \$8.16 | per M gallons |
| Next     | 2,000  | gallons @ | \$6.53 | per M gallons |
| Next     | 6,000  | gallons @ | \$3.26 | per M gallons |
| All Over | 20,000 | gallons @ | \$2.44 | per M gallons |

**Minimum Charge**

No minimum bill will be rendered for less than \$16.32 for 2,000 gallons

|       |            |    |          |           |
|-------|------------|----|----------|-----------|
| 5/8   | Inch Meter | \$ | 16.32    | per month |
| 3/4   | Inch Meter | \$ | 24.48    | per month |
| 1     | Inch Meter | \$ | 40.80    | per month |
| 1 1/2 | Inch Meter | \$ | 81.60    | per month |
| 2     | Inch Meter | \$ | 130.56   | per month |
| 3     | Inch Meter | \$ | 244.80   | per month |
| 4     | Inch Meter | \$ | 408.00   | per month |
| 6     | Inch Meter | \$ | 816.00   | per month |
| 8     | Inch Meter | \$ | 1,305.60 | per month |

### **Delayed Payment Penalty**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

The utility shall not discontinue service to any customer for violation of rules and regulations or for non-payment of bills, without first having tried diligently to induce the customer to comply with its rules and regulations, or to pay his bills. Any discontinuance of service shall follow the rules and procedures of the Public Service Commission of West Virginia.

Service shall actually be disconnected only after at least twenty-four hours written notice shall have been given to the customer by the utility that bills and five or more days delinquent, and in accordance with the rules and procedures of the Public Service Commission of West Virginia.

### **Reconnection Charge**

\$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

### **Tap Fee**

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customers premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 or the actual cost of the connection (solely determined by the Town), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

### **Returned Check Charge**

A service charge equal to the actual bank fee assessed to the Town up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

### **Leak Adjustment Increment**

\$0.83 per 1000 gallons is to be used when the bill reflects unusual consumption which can be attributed attributed to eligible leakage on the customer's historical average usage.

**Security Deposit**

A deposit of \$50.00 or 1/6 of the average annual usage of the applicant's specific customer class, whichever is greater.

**Fire Service Protection**

Fire Hydrant Rental      \$300.00 per hydrant, per year



**United States Department of Agriculture  
Rural Development  
West Virginia State Office**

July 6, 2009

The Honorable Vivian Livingood  
Mayor, Town of Gilbert  
P.O. Box 188  
Gilbert, WV 25621

**SUBJECT:** Town of Gilbert  
Slabtown, Tamcliff, Paynter Bottom Water Project  
(RUS Loan - \$472,000, RUS Grant - \$328,000, Subsequent Grant \$589,478)  
Closing Instructions

Dear Mayor Livingood:

The preliminary closing for the subject loan will be held on July 30, 2009, at 10:30 am at the Gilbert Town Hall. The loan and grant must be handled and closed in accordance with your letter of conditions dated April 11, 2007 and the subsequent letter dated July 6, 2009. All of the requirements of those letters must be met and in addition, the loans and grants must be closed in accordance with RD Instruction 1942-A and RUS Instruction 1780. The following instructions and comments are offered:

1. RUS will need to sign and date the RD Grant Agreement at closing.
2. Form AD 1048, "Certification Regarding Debarment – Lower Tier Covered Transactions," should be provided on contractor(s).
3. Form RD 1927-10, "Final Title Opinion," effective the date of loan closing (August 3, 2009) must be provided for all property owned by the town.
4. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," must be provided showing no exceptions dated for August 3, 2009.
5. A narrative from your attorney dated August 3, 2009 concerning all permits, certifications, or other items necessary to show all legal requirements can be met. This narrative should identify the condemnation proceedings and how they will be handled now that right of entry has been obtained. This should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and WV State Code Chapter 54 have been met with all acquisitions.

75 High Street Federal Building • Suite 320 • Morgantown, WV 26505-7500  
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

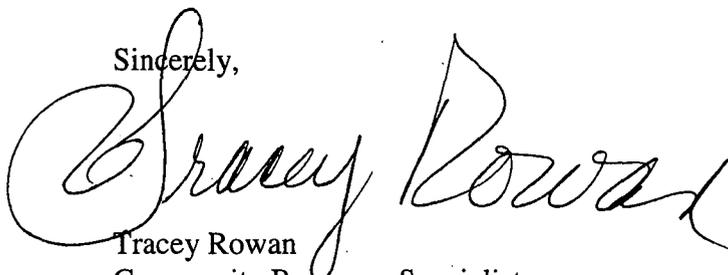
Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

6. The certification on the Loan Resolution will need to be completed at closing.
7. You are reminded that the loan was obligated at the poverty rate of 4.125%. Bond Counsel will be notified with a copy of this letter.
8. On July 30, 2009, the date of the preliminary closing, the applicant must provide evidence of all required insurance and position fidelity bond coverage in compliance with Item 11 of the letter of conditions dated April 11, 2007.
9. A compliance review will need to be conducted by the RUS prior to the start of construction.

If you have any questions regarding the above, please do not hesitate to contact me at (304) 776-5298 ext. 116.

Sincerely,



Tracey Rowan  
Community Programs Specialist

cc: USDA State Director  
Randall Lewis  
Samme Gee  
Region II

**LOAN RESOLUTION**  
(Public Bodies)

A RESOLUTION OF THE Town Council

OF THE Gilbert, Town of

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS Water System

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

WHEREAS, it is necessary for the Gilbert, Town of  
(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

**FOUR HUNDRED SEVENTY-TWO THOUSAND AND XX / 100 DOLLARS (\$472,000.00)**

pursuant to the provisions of Chapter 8 Article 19, West Virginia Code ; and

**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ 328,000.00

under the terms offered by the Government; that Mayor

and Recorder of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Yeas 6 Nays 0 Absent 1

IN WITNESS WHEREOF, the Town Council of the

Gilbert, Town of has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this 11th day of April, 2007

(SEAL)

Attest:  
William E Perry  
William E. Perry  
Title Recorder

Gilbert, Town of  
By [Signature]  
John White  
Title Mayor

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as Mayor of the Gilbert, Town of  
 hereby certify that the Town Council of such Association is composed of  
7 members, of whom 5 constituting a quorum, were present at a meeting thereof duly called and  
 held on the 3rd day of August, 2009; and that the foregoing resolution was adopted at such meeting  
 by the vote shown above, I further certify that as of August 3, 2009  
 the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
 rescinded or amended in any way.

Dated, this 3rd day of August, 2009



Title Mayor

**TOWN OF GILBERT**  
**PO BOX 188**  
**GILBERT, WV 25621**  
**TELEPHONE NUMBER 304-664-9625**

**JOHN W. WHITE**  
**MAYOR**

**WILLIAM E. PERRY**  
**RECORDER**

Date: 5/22/06

Time: 6:30 – 7:40

Meeting was called to order by Mayor John White. Present in addition to the Mayor was the following council members: Vivian Livingood, Penny Sammons, Richard Ellis, Michael Fox and Ray Carter. Also present was Vivian Carter, James Deel, Todd Hamrick, Eric Coberly of EL Robinson, Wayne Ellis, Attorney C. West, Tim Wiley, Mark Goodman, Roland Fields, Brent Doty, Brian Dotson, and Ed Steele. Recorder Eddie Perry was absent due to being in the hospital.

Prayer was led by Wayne Ellis.

First person to address the town council was Eric Coberly, of E. L. Robinson, concerning the Horsepen Water Project. Eric stated that we still need the two investment banker's letters, an accountant and a legal council for this project and for the Slabtown, Tamcliff, Paynter Bottom. These are the requirements for the RUS Application. At this time we do have Mr. Vallet of Vallet and Associates for one of the project but we must get an engagement letter for both projects.

Teresa Miller, of RUS, has contacted us concerning the information that they require for the applications. This information needs to be sent to her ASAP. We must remember that this is two complete applications so therefore we also need an engineering agreement for the Horsepen Water Project. Eric Colberly presented one to the council which a motion was made by Vivian Livingood and seconded by Penny Sammons to accept the engineering agreement. Motion carried. Mr. Colberly also informed the council that the RUS interest rate was around 4.5%. Which is half of prime rate.

A motion was made by Penny Sammons to reapply for the SCBG for the Slabtown, Tamcliffe, Paynter Bottom project which was seconded by Vivian Livingood. Motion carried. Mayor White asked that Mr. Boggs of Region II Planning & Developing be contacted as soon as possible to begin working on the application to SCBG.

Penny Sammons made the motion to engage Bob Rodecker for the attorney for both projects and for Jeff Vallet for the accountant. Michael Fox seconded. Motion carried.

Vivian Carter was then asked to read by Mayor White the proclamation for the Honeysuckle Club which Vivian Livingood made the motion to accept this and to have it added to the minutes of this meeting. Penny Sammons seconded the motion. Motion carried.

Next item on the agenda was the resolutions for the budget digest grants, which require the mayor and the recorders signature. Vivian Livingood made the motion for Mayor John White and Recorder Eddie Perry to sign the resolutions for the grants. Michael Fox seconded. Motion carried.

The police dept. was the next item on the agenda which Chief Hamrick asked for an executive session on a personnel matter.

Michael Fox made the motion to resume the meeting at 7:40 p.m. with Vivian Livingood seconding the motion. Motion carried.

Vivian Livingood made the motion to hire Brent Doty and Larry Thomas as full time officers. Penny Sammons seconded. Motion carried.

Michael Fox made the motion to hire Brian Dotson as a part time patrolman. Vivian Livingood seconded the motion. Motion carried.

Vivian Livingood made the motion to resend a previous motion on sending Josh Endicott to the Police Academy due to the fact he is no longer a full time employee. Michael Fox seconded the motion. Motion carried.

Terry Carter made the motion on the advice of counsel that in the future any officer which is sent to the police academy by the Town would need to stay as an officer for a minimum of one year. If this officer chooses to leave our employment, the monies which the town paid for their academy, their clothing and their physical will be prorated depending on the amount of time which they was employed by the town starting from the time which they return from the academy. Vivian Livingood seconded the motion. Motion carried.

When asked about the recent robbery at Rite-Aid by town councilmen Chief Hamrick informed us that this was an ongoing investigation with the WV State Police.

Mayor White instructed Chief Hamrick to have all of his officers bonded by City Insurance.

Council also informed Chief Hamrick to contact the Mingo County Vo-Tech concerning a maintenance plan for all vehicles owned by the Town of Gilbert.

Next item on the agenda was the Gilbert Water Works which was given by James Deel. This report gives a consisted of the water loss which is at 33% and we are in need of ordering chemicals. Terry Ray Carter made the motion to allow James to order the necessary chemicals. Michael Fox seconded the motion. Motion carried.

Council member Richard Ellis then began the discussion on the Hatfield/McCoy meeting which is scheduled on the 31<sup>st</sup> day of May at 1:00p.m. Council member Richard Ellis asked for Wayne Ellis to bring the council up to date. Wayne Ellis stated that Richard and several others had discussed the possibilities of asphaltting the road which the atv's are presently using as a connector to the trail and possibly installing grates on the trail leading into town to possibly to assist with the dust and mud problem. Mr. Wayne Ellis also informed everyone that Terry Sammons would be speaking at the on behalf of the landowners at the Hatfield/McCoy trail meeting. Vivian Livingood asked if the police could watch the atv a little closer to insure that the atv obey the rules of the town. Mr. Wayne Ellis also stated that he would evidentially like to see more trails added to the Gilbert trails.

Vivian Livingood made the motion for Richard Ellis to check the condition of the back street which the atv are presently using as a access to come into town and if at any time he feels that the street needs to be clean to call town hall and have the town employees to wash the street. Michael Fox seconded the motion. Motion carried.

Richard Ellis also asked if the council would again pay for the diesel for Wayne Ellis to work the trail as we have always done in the past. Vivian Livingood reminded everyone that this had already been approved by the council.

Vivian Livingood also asked if Laura Bobbera's house needed washed due to the dust. With no acknowledgment from anyone on whether or not this is an issue with Mrs. Bobbera this was tabled until this could be decided upon. Also it was stated that if she did wash down her house she would be given a discount on her water bill due to the dust from the trail system.

When the subject of the police manual and the handbook for the employees of the town, each council member asked if the secretary would assign them sections to read so they could each study it before a decision is made on whether or not to pass the manuals.

Roland Field asked if there is a possibility if the town could beautify the intersection of route 52 and route 80. Secretary Carter stated that the town had tried to do that in the past but the property was owned by the railroad company and they clearly did not want anything in that section. Council stated that if he would want to pursue that and report back them on and his finding at the next meeting.

Vivian Livingood informed the council that recently a group of atv riders came into town and part of their club's project was to clean the garbage up in town. Mrs. Livingood stated that they had the entire town clean within a matter of hours. And she also informed everyone that this was also in the recent Gilbert Times.

Having no further business a motion was made by Michael Fox and seconded by Penny Sammons to close the meeting at 8:20 p.m. Motion carried.

**RESOLUTION  
TOWN OF GILBERT, WEST VIRGINIA  
ADOPTING PSC ORDERED WATER RATE INCREASE**

**WHEREAS**, by order of the Public Commission of West Virginia directing the implementation of the rates listed below in the time frame listed below; and,

**WHEREAS**, the implementation of the rates is necessary to comply with the decision of the Public Commission and continue the Town's pursuit of grants, funding, and approval for the construction and installation of improvements to the system; and,

**WHEREAS**, the said construction is deemed to be for the public good and a public purpose; now therefore, be it

**RESOLVED**, that the Town of Gilbert hereby adopts the following rates contained in Phase One, effective 12:01 a.m., September 27, 2008, and continuing until further modified; and be it further

**RESOLVED**, that the Town of Gilbert hereby adopts the following rates contained in Phase Two, effective upon "substantial completion" of the project outlined in that rate schedule, and further outlined in the codified ordinances of the Town of Gilbert; and be it further

**RESOLVED**, that the Town Clerk is directed and authorized to publish the rates to the public in any manner allowed or required by law, and be it further

**RESOLVED**, that the Town Clerk or her designee is authorized to send a copy of this Resolution to the Public Service Commission of West Virginia.

**WATER RATES**

The rates and charges in this Article apply to service in entire territory encompassed by the Town of Gilbert and any extensions thereto, pursuant to Phase One and Phase Two.

**Availability of Service.**

Service shall be offered and available for general domestic, commercial, and industrial and sale for resale water service.

**PHASE ONE RATES**

|                         |                             |
|-------------------------|-----------------------------|
| First 2000 Gallons      | \$8.05 per thousand gallons |
| Next 2000 Gallons       | \$6.50 per thousand gallons |
| Next 6000 Gallons       | \$4.40 per thousand gallons |
| Next 10,000 Gallons     | \$3.40 per thousand gallons |
| All Over 20,000 Gallons | \$2.95 per thousand gallons |

**MINIMUM CHARGES**

No minimum will be rendered for less than the following amounts based on meter size:

|                |                    |
|----------------|--------------------|
| 5/8inch meter  | \$16.10 per month  |
| 3/4 inch meter | \$24.15 per month  |
| 1 inch meter   | \$40.25 per month  |
| 1½ inch meter  | \$80.50 per month  |
| 2 inch meter   | \$128.80 per month |
| 3 inch meter   | \$241.50 per month |
| 4 inch meter   | \$402.50 per month |
| 6 inch meter   | \$805.00 per month |

**SALES FOR RESALE**

All water for resale will be billed in accordance with the approved rate of \$2.36 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

The utility shall not discontinue service to any customer for violation of rules and regulations or for non-payment of bills, without first having tried diligently to induce the customer to comply with its rules and regulations, or to pay his bills. Any discontinuance of service shall follow the rules and procedures of the Public Service Commission of West Virginia.

Service shall actually be disconnected only after at least twenty-hour hours' written notice shall have been given to the customer by the utility that bills are five or more days delinquent, and in accordance with the rules and procedures of the Public Service Commission of West Virginia.

**RECONNECTION CHARGE**

\$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

**TAP FEE**

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Public Service Commission for each new tap to the system.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the Town up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

**LEAK ADJUSTMENT**

\$0.67 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's historical average usage.

**SECURITY DEPOSIT**

A deposit of \$50.00 or 1/6 of the average annual usage of the applicant's specific customer class, whichever is greater.

**FIRE SERVICE PROTECTION**

Fire Hydrant Rental                      \$300.00 per hydrant, per year

**PHASE TWO RATES**

|                         |                             |
|-------------------------|-----------------------------|
| First 2000 Gallons      | \$8.10 per thousand gallons |
| Next 2000 Gallons       | \$6.50 per thousand gallons |
| Next 6000 Gallons       | \$4.40 per thousand gallons |
| Next 10,000 Gallons     | \$3.50 per thousand gallons |
| All Over 20,000 Gallons | \$3.00 per thousand gallons |

**MINIMUM CHARGES**

No minimum will be rendered for less than the following amounts based on meter size:

|                |                    |
|----------------|--------------------|
| 5/8 inch meter | \$16.20 per month  |
| 3/4 inch meter | \$24.30 per month  |
| 1 inch meter   | \$40.50 per month  |
| 1½ inch meter  | \$81.00 per month  |
| 2 inch meter   | \$129.60 per month |
| 3 inch meter   | \$243.00 per month |
| 4 inch meter   | \$405.00 per month |
| 6 inch meter   | \$810.00 per month |

**SALES FOR RESALE**

All water for resale will be billed in accordance with the approved rate of \$2.75 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

The utility shall not discontinue service to any customer for violation of rules and regulations or for non-payment of bills, without first having tried diligently to induce the customer to comply with its rules and regulations, or to pay his bills. Any discontinuance of service shall follow the rules and procedures of the Public Service Commission of West Virginia.

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**SECURITY DEPOSIT**

A deposit of \$50.00 or 1/6 of the average annual usage of the applicant's specific customer class, whichever is greater.

**FIRE SERVICE PROTECTION**

Fire Hydrant Rental                      \$300.00 per hydrant, per year

Adopted by the Town Council of the Town of Gilbert, West Virginia, this 18<sup>th</sup> day of September, 2008.

  
P. L. WHITE

ATTEST:



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**FINAL**

**Entered: August 28, 2008**

9/17/2008

CASE NO. 08-0786-W-MA

TOWN OF GILBERT, a municipal corporation, Mingo County.

Investigation and suspension of increase in water rates and charges as a result of petitions filed in accordance with *West Virginia Code* §24-2-4b.

**RECOMMENDED DECISION**

**PROCEDURE**

On April 15, 2008, the Town of Gilbert (Gilbert), a municipal corporation, Gilbert, Mingo County, adopted an ordinance increasing its rates and charges to provide water service to its customers inside and outside its corporate boundaries, to become effective May 30, 2008. Gilbert published a notice of these rates, and, pursuant thereto, on or about May 14, 2008, the Mingo County Public Service District (District), as receiver for Justice Public Service District (JPSD), a resale customer of Gilbert, submitted a petition to the Public Service Commission protesting Gilbert's April 15, 2008 rate ordinance, alleging discrimination to its customers and opposing granting any emergency interim rate relief. Pursuant to the protest and pursuant to *West Virginia Code (Code)* §24-2-4b, by the May 15, 2008 Commission Order Suspending Rates and Referring to Administrative Law Judge (Order), the Commission invoked its jurisdiction over the municipal appeal. The Commission made Gilbert a Respondent to this proceeding and, pending investigation, hearing and decision in this matter, the Commission suspended the aforesaid rate ordinance and deferred using the rates and charges stated in the rate ordinance until 12:01 a.m., September 27, 2008, which is a Saturday, unless otherwise ordered by the Commission, to enable the Commission to examine and investigate the supporting data filed with the rate ordinance and to provide time for Commission Staff to make reports concerning the matters involved in this proceeding. Also, the Order referred this matter to the Division of Administrative Law Judges for decision on or before August 28, 2008, effectively 30 days prior to the end of the statutory suspension period. Finally, the Order directed Commission Staff to file its report on or before July 14, 2008.

On June 18, 2008, Staff Attorney Carrie F. DeHaven submitted the Initial Joint Staff Memorandum, attaching the June 3, 2008 Initial Internal Memorandum from Utilities Analyst Supervisor David L. Accord and Utilities Analyst Nathan Nelson, both of the Water and Wastewater Division, and from Staff Engineer Jonathan M. Fowler, P.E., Engineering Division, indicating that

Commission Staff would complete its investigation as soon as possible and submit its report as directed by the Commission.

On July 10, 2008, Melissa K. Marland, Chief Administrative Law Judge, issued a Procedural Order appointing the undersigned Deputy Chief Administrative Law Judge (ALJ), Ronnie Z. McCann, to review the grievances raised by the petitioners in this proceeding, to conduct a hearing and to issue a recommended decision on the matters involved in this proceeding.

Responding to all of the above, by the July 10, 2008 Order Requiring Publication, as corrected on July 10, 2008, the ALJ adopted a procedural schedule to process and resolve this matter, including a Wednesday, July 30, 2008 hearing date.

On July 30, 2008, the ALJ convened the hearing as scheduled. Gilbert appeared at the hearing by counsel, W. Richard Staton, Esquire; the District appeared by counsel, Robert R. Rodecker, Esquire; and Commission Staff appeared by counsel, Staff Attorney Carrie DeHaven. Commission Staff presented the testimony of three witnesses and presented one exhibit. Gilbert presented the testimony of three witnesses and presented one exhibit. The District presented the testimony of one witness and presented four exhibits.

On August 1, 2008, the reporter submitted a 161-page transcript and a one-page certificate that the transcript is a true and accurate record of the July 30, 2008 hearing.

After the hearing, the parties availed themselves of their opportunity under *West Virginia Code* §24-1-9(b) to submit proposed orders, proposed findings of fact and conclusions of law, briefs and replies, all of which the ALJ considered, together with all of the evidence presented, prior to rendering this Recommended Decision.

### **EVIDENCE**

Although the Mingo County Public Service District (District) is the entity which protested Gilbert's rate ordinance, it did so in its capacity as the receiver for the Justice Public Service District. The JPSD is Gilbert's customer, not the Mingo County Public Service District. The water line discussed in the evidence refers to a water distribution line built by the JPSD and given to Gilbert.

Commission Staff called Utilities Analyst Nathan Nelson of the Commission's Water and Wastewater Division as its first witness. Mr. Nelson identified the Staff Report, received as Staff Exhibit No. 1. The test year ended on June 30, 2007. Staff made some per books adjustments to make the information contained in Gilbert's financial books and records properly reflect the correct line items and classifications. Staff made going-level adjustments to reflect known and measurable changes in expenditures that are reasonable. The Staff-recommended rates were designed using a customer class cost of service study prepared by Staff. The Staff-recommended rates are to be phased in with two steps. The first phase is to cover the cost of service prior to completion of a line extension project and the second phase is to cover the cost of service after the project is completed. The first phase of the Staff-recommended rate increase is needed irrespective of whether Gilbert

builds the project. The second phase is needed only if Gilbert obtains the requisite certificate and builds the project. (Tr., pp. 19-23; Staff Exhibit No. 1).

Mr. Nelson stated that, at going-level, Gilbert's total revenue requirement is \$101,750. Gilbert's ordinance would increase that amount to \$127,781 for the first phase and to \$169,331 for the second phase. The Staff-recommended rates would increase the revenue requirement to \$141,052, which is \$39,302, or approximately 39%, above going-level, for the first phase and to \$187,609, or an additional \$46,557 or 33%, for the second phase. Altogether, the second phase rates would be \$85,859, or 84%, above going-level. At going-level, Gilbert is operating at a \$24,703 cash flow deficit. Gilbert currently has no long-term debt, but would incur long-term debt once the certificate project is authorized and completed. After paying all operation and maintenance (O&M) expenses and taxes, the first phase Staff-recommended rates would provide a \$10,789 cash flow surplus. The second phase Staff-recommended rates would provide a \$12,069 cash flow surplus, which would cover all O&M expenses, taxes and debt service requirements, providing a 178% debt service coverage ratio. Mr. Nelson opined that the Staff-recommended rates for phase one are necessary to properly fund Gilbert's current water operations and that the phase two Staff-recommended rates are necessary to properly fund Gilbert's water operations after the certificate project becomes operational. Mr. Nelson only determined the proper level of revenues which Gilbert needs to operate. Other Staff members prepared the customer class cost of service study and the allocation factors used in that study. (Tr., pp. 23-26; Staff Exhibit No. 1).

Mr. Nelson indicated that, to his knowledge, Gilbert had not yet refunded to the District the sum of \$2,105 as a result of over-billing the District. Staff recommended that Gilbert make this refund in 12 equal monthly installments in the form of a credit to the District's bill. Staff recommended that the resale rate to the JPSD be increased in phase one from \$1.57 per 1,000 gallons to \$2.36 per 1,000 gallons and, in phase two, to \$2.75 per 1,000 gallons. Mr. Nelson is aware that the present rate which Gilbert charges the JPSD was negotiated by contract, not by the rate ordinance process. Mr. Nelson believes that Gilbert's certificate case is nearing the approval stage with the Commission. The ordinance passed by Gilbert was intended to cover the current O&M expenses and taxes and to cover the additional O&M expenses, taxes and debt service required as a result of the certificate project. According to the Staff-recommended cash flow analysis, the refund by Gilbert to the JPSD would have to be paid out of the surplus. For this reason, the surplus during the first year would be approximately \$8,600, and thereafter, until the project is completed, the surplus would be approximately \$10,789. The Staff-recommended surplus reflects 1/12 of Gilbert's O&M expenses and taxes. The rate ordinance passed by Gilbert actually would have created a cash flow deficit. (Tr., pp. 26-31; Staff Exhibit No. 1).

Mr. Nelson explained that, since Gilbert currently has no long-term debt, Staff did not calculate a debt service coverage ratio for phase one of the rates. All of Staff's scenarios included increasing the rate for the District. (Tr., pp. 36-38).

The next witness for Commission Staff was Technical Analyst James Spurlock of the Commission's Engineering Division, who prepared the engineering allocation factors for Staff's customer class cost of service study for Gilbert's water operation. The engineering allocation factors

are applied to the total revenue requirement to determine the amount of revenue required from each customer class, so that rates can be designed based upon the cost of service for each respective customer class. Each customer class places different demands on the water system, which translates to different costs to serve each class. The water treatment plant and distribution system have to be designed to accommodate the various demands placed on the system by the different customer classes at different times of the day. It costs more to provide service at peak demand times. The allocation factors consider all known cost factors for each customer class, including the peak daily demands, the peak hourly demands, administration costs, commodity demands and customer demands. These demands are expressed in percentages or factors and are used to allocate the costs to each customer class, i.e., the residential, commercial, industrial and resale classes. (Tr., pp. 39-42).

Mr. Spurlock explained that Staff developed the allocation factors for the customer class cost of service study used in this case by adapting the Gannett-Fleming study performed for a West Virginia-American Water Company case in 2001. The Commission and Commission Staff generally have accepted the Gannett-Fleming study as representative of the various demands placed on most water systems in the state, e.g., in the Gannett-Fleming study, the maximum day demand for the resale class was 140% and the maximum hour demand was 170%, and these are the demand factors Mr. Spurlock used to arrive at the resale demand in the instant Gilbert rate case. Acknowledging that use of the figures from the Gannett-Fleming study is not precisely reflective of the demands placed on Gilbert's system by any customer class, Mr. Spurlock opined that the Gannett-Fleming study is the best available set of data to use to develop engineering allocation factors for the instant case. The Gannett-Fleming study used data from many different water systems across the state. Mr. Spurlock commented that, had he used actual data from Gilbert only, the daily demand factor would have been much higher for the resale class. Mr. Spurlock acknowledged that, sometimes, Commission Staff uses actual demand factors for the resale class, but did not elect to do so in its analysis of this case. (Tr., pp. 42-47; Staff Exhibit No. 1).

Mr. Spurlock testified that Gilbert's unaccounted-for water was approximately 29.7% for the test year, which is higher than the Commission-allowed 15%. Mr. Spurlock acknowledged that, while some inconsistency exists in the Staff Report with respect to the amount of unaccounted-for water, the actual calculation uses the correct percentage. The new line which Gilbert is proposing under the certificate case is projected to decrease the unaccounted-for water to about 28.3%. Mr. Spurlock opined that, since the JPSD uses Gilbert's water distribution system, the JPSD must help pay for the unaccounted-for water. Using Staff's calculations, the percentage of unaccounted-for water is 12.34% for the resale class. Residential unaccounted-for water is approximately 56% and commercial unaccounted-for water is approximately 31%. (Tr., pp. 47-51).

Mr. Spurlock acknowledged that, in developing the engineering allocation factors, Staff did not take into account the fact that Gilbert's current rate for its resale customer was negotiated by contract. Mr. Spurlock perused the contract between Gilbert and the JPSD, received as District Exhibit No. 1. Mr. Spurlock read from paragraph 2.1 of the contract, "Buyer [JPSD] agrees to construct an eight inch transmission line (hereafter 8 inch line), from the end of Sellers' [Gilbert] existing system at a point on U.S. Route 52 to the Buyer's service district boundary, including the construction of necessary metering equipment and facilities to be maintained and operated thereafter

at the cost and expense of Seller." The contract also set a rate of \$1.40 per 1,000 gallons and stated, "It is hereby specifically acknowledged and agreed by the parties that the aforementioned rate is determined by reference to Seller's cost of producing water, without including all expenses of Seller's water system, such as maintenance, parts, gasoline, postage, payroll and taxes, debt service, capital expenditures and other matters that would not be properly includable in determining Seller's cost of producing water." Mr. Spurlock acknowledged that the methodology set forth in the contract for determining the resale rate is not the methodology followed by Commission Staff. Mr. Spurlock was aware that the current resale rate was set by contract, but he did not consider that in developing the engineering allocation factors for the customer class cost of service study. (Tr., pp. 52-56; District Exhibit No. 1).

Mr. Spurlock related that, after he developed the engineering allocation factors, other Commission Staff employees used those factors to develop a rate design that would recover the costs associated with each customer class. Mr. Spurlock is not sure whether the line serving the resale customer, i.e., the JPSD, is a six-inch line or an eight-inch line, but he acknowledged that Staff's analysis used a six-inch line for the resale class. He opined that, if Staff had used an eight-inch line in its calculations, the final outcome of the Staff-recommended rates would not have noticeably changed. Mr. Spurlock does not know what is actually in the ground, but the final Staff-recommended rate for the resale class would not appreciably change. (Tr., pp. 56-60).

Mr. Spurlock stated that, in preparing the engineering allocation factors for this case, he did not take into consideration the effect, if any, of the JPSD building the transmission line from Gilbert's mainline to the JPSD's service territory and the JPSD then giving that line to Gilbert, i.e., Staff did not give the JPSD any type of credit for this contribution to Gilbert's system. Staff also did not follow the methodology set forth in the contract between Gilbert and the JPSD to develop the engineering allocation factors in this case. Mr. Spurlock opined that this treatment of the line donated to Gilbert by the JPSD is proper and that all customer classes, including the resale class, should pay for the operation and maintenance of that line. (Tr., pp. 62-64).

Mr. Spurlock explained that, had he used an eight-inch line, instead of a six-inch line, to allocate cost of service for the JPSD, the resale rate would have increased, not decreased. Whether or not the JPSD built an eight-inch line or a six-inch line and turned it over to Gilbert, the Staff-recommended rates do not cause the JPSD to pay for that line twice. The JPSD decided to contribute that line to Gilbert's operation in exchange for obtaining water for resale to its customers. Now, Gilbert owns the line and all customer classes are responsible for its operation and maintenance. Mr. Spurlock could not specify the exact change in rates that would have occurred had he allocated an eight-inch line to the JPSD instead of a six-inch line, but it would have been a minute change and it would have increased the JPSD's rate, not decreased it. (Tr., pp. 64-69).

Mr. Spurlock acknowledged that the allocation factors are not limited to operation and maintenance expenses, but also would be used to determine the costs for each class for taxes and any other expenses. Also, under the Staff-recommended phase two rates, the JPSD will be paying for a share of the anticipated certificate project costs. (Tr., pp. 69-70).

Mr. Spurlock acknowledged that section 2.4 of the contract between Gilbert and the JPSD requires that the JPSD pay its bill each month within 14 days of receiving the bill. Whatever its size, the line serving the JPSD is adequate. It should not be replaced anytime soon, since it is only about 20 years old. The pending certificate project, as Mr. Spurlock understands it, would not replace that particular line. Mr. Spurlock is aware that the pending project will add approximately 172 new customers to Gilbert's customer base. The project is not needed in order to serve the JPSD, although the new storage tank might benefit the JPSD. (Tr., pp. 71-75; District Exhibit No. 1).

The final witness who testified on behalf of Commission Staff was Utilities Manager Geert Bakker of the Commission's Water and Wastewater Division. Although Mr. Bakker did not prepare the Staff-recommended rates or any portion of the Staff Report, i.e., David Accord prepared the customer class cost of service study and designed the Staff-recommended rates, Mr. Bakker has reviewed all of materials and calculations made by Staff. He is very familiar with all of the work contributed by Mr. Accord and testified regarding Mr. Accord's work in this case. A customer class cost of service study is prepared using the engineering allocation factors developed by the Engineering Division and the total revenue requirement developed by the Water and Wastewater Division. Using this methodology, Staff designs rates that will generate all of the revenue needed by Gilbert and ensure that each customer class pays its fair share of the costs and that no customer class subsidizes another customer class. First, using the allocation factors, the cost to serve each customer class is determined. Then, rates are designed that will generate the revenues needed to cover the costs associated with each respective customer class. At per books, the revenue generated by the residential class is approximately \$52,330, but the study shows that the residential class should be generating approximately \$64,063. Likewise, the commercial class currently is generating approximately \$29,058, but should be generating \$39,060. The resale class currently is generating \$18,436, but should be generating \$35,474, according to the customer class cost of service study. Similarly, after the certificate project is completed, the second phase of the Staff-recommended rates were designed to generate the revenue required by each customer class as it would exist at that time. The amount of revenue allocated to the resale class actually is lower after the project than before the project. For this reason, Staff has recommended phasing in the increase to the resale class, i.e., recover approximately \$27,712 from the resale class prior to the completion of the project and recover approximately \$32,000 from the resale class after the project, rather than going to approximately \$35,474 immediately and then reducing it to \$32,000 after the project is built. Staff has tried to reduce the rate shock to the resale class. (Tr., pp. 77-81; Staff Exhibit No. 1).

Mr. Bakker explained that adding the new customers to Gilbert's customer base is one reason the allocated share for the resale class would be lower after the project is built. Also, more costs of the project are allocated to the residential and commercial classes because those are the customer classes who will benefit most from the project. Adding 170 new customers to Gilbert's existing customer base of approximately 240 customers is a significant customer increase. In order to facilitate the lessening of the rate shock to the resale class, Staff has increased the rates more for the residential and commercial classes in the first phase of the rate increase, e.g., the residential class should generate approximately \$64,000, but, under the Staff-recommended rates, would generate about \$70,000. The Staff-recommended rates follow the cost of service study, except that they reduce

the rate shock for the resale class. Mr. Bakker opined that the JPSD is not being forced to pay twice for the eight-inch or six-inch line it donated to Gilbert. (Tr., pp. 81-85, 96-99; Staff Exhibit No. 1).

Mr. Bakker would not agree with the JPSD/District's counsel that the Staff-recommended rate design is illogical. The reason that the JPSD's rate does not decrease after the project is built is that, under the Staff-recommended rate design, the JPSD's rate does not increase as much as it should under the first phase of the rate increase. Mr. Bakker opined that the approach taken by Staff is the most fair way of increasing the rates for the JPSD. The Staff-recommended rates do permit the residential and commercial classes to subsidize the JPSD for a temporary period, until the project is completed, and then each customer class will be paying its respective fair share. The fact that Staff allocated a six-inch line to the JPSD, not an eight-inch line, does not discredit the cost of service study. The fact that the JPSD has paid for and donated a line to Gilbert was the JPSD's choice. Now that Gilbert owns that line, it is fair that the JPSD pay for the operation and maintenance of that line, which is recovered under the Staff-recommended rates. The JPSD may or may not still be paying for the cost of constructing the line, but, under the Staff-recommended rates, the amount that the JPSD will be charged is the cost Gilbert incurs to serve the JPSD through that line. Mr. Bakker opined that the contribution by the JPSD of the line to serve the JPSD is different than a contribution made by Scott's Run Public Service District to the City of Morgantown to build a treatment plant, in that every customer of Morgantown benefitted from the treatment plant and only the JPSD benefits from this line. Also, the line has depreciated for about 15 of its 40-year useful life expectancy. (Tr., pp. 85-96, 99-100).

Mr. Bakker reiterated that the approach that Staff has taken to reduce the rate shock to the JPSD is a fair approach. By strictly following the cost of service study, the JPSD rates would double and then be reduced after the project. Under Staff's approach, the JPSD's rates will increase twice to eventually reach the level indicated by the cost of service study. As far as following the methodology in the contract to determine the JPSD's rate, if the existing contract rates will not produce the revenue needed for the municipality, Mr. Bakker believes that new rates should be designed based on a cost of service study, or, as in this case, by a hybrid approach to the cost of service study rates, i.e., reducing the rate shock to the resale customer in the phase one rates. In order to perform a cost of service study, you have to include all customer classes, not just some customer classes. (Tr., pp. 100-107).

Mr. Bakker acknowledged that the Staff-recommended rates are based on the assumption that Gilbert will collect 100% of its billings to its customers. However, included in the expenses is a category called uncollectible accounts, which is 0.5%. (Tr., pp. 107-109). Mr. Bakker acknowledged that Gilbert's current tariff on file with the Commission does not contain a resale rate. Staff is recommending a resale rate in order to fairly recover the costs from all customer classes, rather than rely upon the contract rate, which Staff believes is inadequate to recover the cost to serve the resale class. (Tr., pp. 107-110).

Mr. Bakker opined that, should Gilbert and the JPSD decide to renegotiate a contract resale rate, they should follow the cost of service study prepared by Commission Staff. Mr. Bakker opined that the leak adjustment rate is not the same as what a resale rate should be. The leak adjustment rate

only considers the incremental cost of producing each extra gallon of water needed as a result of the leak. Mr. Bakker does not believe that the leak adjustment rate would be the same as the rate anticipated by the methodology contained in the contract between Gilbert and the JPSD, although he had not seen the contract until the hearing. (Tr., pp. 157-159).

The District called its General Manager, J. B. Heflin, to testify. Mr. Heflin explained that, early in his ten-year tenure with the District, sometime around 2000, the Justice Public Service District defaulted on its loan from the West Virginia Water Development Authority (WDA) and, as a result, the District was appointed as the receiver of the JPSD until the District and the JPSD are merged into one operating entity. This matter is pending bondholder approval, i.e., the District must establish that it is financially and otherwise capable of accepting the JPSD as part of the District's system. The rates of the JPSD are lower than those of the District, which are among the highest in West Virginia. Any increase in Gilbert's resale rate will affect only the approximately 240 customers of the JPSD, not the District directly. However, the long-term goal is to completely merge the operations of the JPSD and the District and to adopt unified rates for all of the District's customers. (Tr., pp. 112-113, 122).

Mr. Heflin acknowledged that the JPSD purchases all of its water from Gilbert as a resale customer. The rate is determined by a contract between the JPSD and Gilbert. Mr. Heflin was not associated with the JPSD when the contract rate increased from \$1.40 per 1,000 gallons to its current rate of \$1.57 per 1,000 gallons. He knows the current rate is \$1.57 per 1,000 gallons, but does not know when or how that change was made. (Tr., pp. 113-114).

Mr. Heflin identified the public notice of change in rates that Gilbert published after adopting the instant rate ordinance, received as District Exhibit No. 2. This document was faxed to the District's office on or about May 2, 2008. This document indicates that the resale rate would be increased by 31%, which is why the District petitioned the Commission to reject Gilbert's rate ordinance. (Tr., pp. 114-115; District Exhibit No. 2).

Mr. Heflin identified a Recommended Decision, entered on May 21, 1993, final on May 29, 1993, in Case No. 91-829-PWD-CN, *The Justice Public Service District*, received as District Exhibit No. 4. Mr. Heflin read from page two of the Recommended Decision, "Water for the proposed distribution system will be purchased by the JPSD from the Town of Gilbert for \$1.40 per 1,000 gallons. The agreement between the Town of Gilbert and the JPSD has been submitted for the Commission's approval." This Recommended Decision also contained the following ordering paragraph:

IT IS FURTHER ORDERED that the financing for the proposed project and the water purchase agreement between the Town of Gilbert and the District [JPSD] be, and they hereby are, approved.

Mr. Heflin noted that this Recommended Decision also described the financing for the project as comprised of a \$258,042 Appalachian Regional Commission Grant, a \$491,958 Small Cities Block

Grant and a \$366,000 WDA loan bearing 7.5% interest to be repaid for a period of 40 years. (Tr., pp. 115-118; District Exhibit No. 4).

Mr. Heflin opined that the rates recommended by Commission Staff did not consider the contract rate, which has been approved by the Commission. The District disagrees with the Staff-recommended rates. Gilbert has never approached the JPSD to try to negotiate a rate for the JPSD customers. The JPSD would be willing to negotiate a new contract rate. The District did not file its petition in this matter to slow up or distort Gilbert's rate ordinance, but, as the receiver for the JPSD, the District has to protect the interests of the JPSD customers. Gilbert's resale rate at this time is \$1.57 per 1,000 gallons. The District is open to negotiating a rate with Gilbert in the immediate future, e.g., before the Recommended Decision in this municipal appeal case is due.<sup>1</sup> (Tr., pp. 118-120).

Mr. Heflin acknowledged that paragraph 2.4 of the contract, i.e., District Exhibit No. 1, requires the JPSD to make payments for water within 14 days of receipt from Gilbert of a bill or statement enumerating the amount of water sold. Mr. Heflin is aware that Gilbert believes that the JPSD is delinquent on its payments to Gilbert. Mr. Heflin acknowledged that the payment from the JPSD constitutes a substantial portion of Gilbert's total income. The JPSD built the eight-inch line described in the contract and turned ownership over to Gilbert. (Tr., pp. 120-125; District Exhibit No. 1).

Counsel for Gilbert submitted the publication affidavit, received as Gilbert Exhibit No. 1, which shows that the Notice of Hearing was published in the *Williamson Daily News* on July 14 and 21, 2008. (Gilbert Exhibit No. 1).

The first witness who testified on Gilbert's behalf was Gary D. Facemyer, P.E., Gilbert's project manager. Gilbert is proposing to build a mainline extension along State Route 80 between Gilbert and the Logan County line, which will add approximately 172 new customers to Gilbert's customer base. The line extension is not within the District's service territory. The JPSD would benefit from the project since it includes a new water storage tank to be located near the Gilbert town limits. Adding a third water storage tank to Gilbert's system will increase the system's total system reliability. Mr. Facemyer opined that the water line serving the JPSD is sufficient to adequately serve the needs of the JPSD. Also, Gilbert is painting and refurbishing its existing water storage tanks. The project will include adding telemetry to the water treatment plant, which will enable Gilbert to provide more reliable water service to all of its customers, including the JPSD. (Tr., pp. 126-130).

Mr. Facemyer identified an engineer's report of Gilbert's certificate project, prepared for the West Virginia Bureau for Public Health, received as District Exhibit No. 4. This document indicates that the JPSD currently serves approximately 240 customers. Mr. Facemyer acknowledged that, while the JPSD has its own water storage tank, that tank would be sufficient only if Gilbert can consistently pump water to the JPSD's tank. The fact that the JPSD has its own tank does not mean that it would not benefit from Gilbert adding a third tank to its system. All three of Gilbert's tanks will be at the

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<sup>1</sup>Counsel for Gilbert commented, "It's absolutely the first time we've ever heard of it." (Tr., p. 120).

same altitude and are interconnected, which will effectively make the three act as one large tank. The third tank would not be needed if Gilbert was not adding the 172 new customers, but adding a third tank does make Gilbert's system more reliable and dependable. The JPSD is not placing such demand on Gilbert's system so as to cause Gilbert to have to build a new tank, but the third tank will increase Gilbert's reliability. (Tr., pp. 131-134; District Exhibit No. 4).

The next witness Gilbert called was James Deel, Gilbert's chief water operator. Mr. Deel has worked in the area of Gilbert's master meter serving the JPSD, which is near Gilbert's treatment plant. A portion of the line is six inches in diameter instead of eight, but he is not sure where it changes from six to eight. (Tr., pp. 135-138).

Gilbert's final witness was its Town Clerk, Vivian Carter, who has served in that position since January 8, 1979. Ms. Carter does the billing for Gilbert and she is familiar with the contract between the JPSD and Gilbert, i.e., District Exhibit No. 1. The JPSD often does not abide by the terms of that contract, e.g., the JPSD does not always pay on time or does not always pay all that is owed. The JPSD has been late nine times since July 2007. On the day of the hearing, the JPSD owed Gilbert \$5,733.17. The bill to the JPSD represents about 1/4 of Gilbert's billing. Ms. Carter telephoned the District several times in 2007 to get the JPSD bills paid, but she has not called any during 2008, even though the JPSD is still paying late and is still behind in what it owes Gilbert. Ms. Carter sent the District a letter about the delinquency during 2008, but has not received a response. (Tr., pp. 140-145; District Exhibit No. 1).

Ms. Carter informed Gilbert's Town Council of the contract rate between the JPSD and Gilbert when the Town Council was considering the rate ordinance. Ms. Carter is not aware that Gilbert and the District or the JPSD tried to negotiate a new contract resale rate instead of creating one in the new rate ordinance. Ms. Carter recited that, on August 17, 1998, after a Gilbert rate ordinance had been passed to increase the rates of Gilbert's other customers, Gilbert and the JPSD renegotiated the resale contract rate, increasing it from \$1.40 per 1,000 gallons to \$1.57 per 1,000 gallons. Ms. Carter understood that, when Gilbert passed the instant rate ordinance, it increased the resale rate by the same percentage as its other customers, but then withdrew the resale rate increase so that a new contract resale rate could be negotiated, but she is not aware of any negotiations taking place this time. In 1998, after Gilbert passed a rate ordinance sometime in 1997, the Commission performed a cost of service study and approved rates. Then Gilbert "negotiated" a new rate with the JPSD, i.e., the new negotiated rate was \$1.57 per 1,000 gallons, which is what Michael Griffith of the Commission had recommended as a resale rate during the rate case. Ms. Carter clarified that the 1997 ordinance did not result in a hearing before the Commission, but Michael Griffith assisted Gilbert in developing its new rates. Gilbert passed a rate ordinance in 1997, but no one protested. Then, in 1998, based on the information gained from the rate ordinance and the review by Commission Staff, Gilbert and the JPSD negotiated the \$1.57 per 1,000 gallons rate. (Tr., pp. 145-150, 152-155).

Ms. Carter had not seen the Staff Report, which indicated that Gilbert had billed the District for varying amounts during the test year, e.g., \$1.57 per 1,000 gallons one month, \$1.82 per 1,000 gallons another month, \$1.63 per 1,000 gallons another month and so forth. Ms. Carter responded that Gilbert had recently acquired a new computer system which has corrected that discrepancy. She

blamed the incorrect billings on the old computer system. Ms. Carter just enters the meter readings into the computer and the computer generates the bills for all of Gilbert's customers, including the JPSD. (Tr., pp. 150-152).

## DISCUSSION

The Commission is vested with the requisite authority to review the terms of a contract between two utilities and determine whether there are terms contained in the contract over which the Commission should exercise authority. See, *Code* § 24-2-12. See also, *United Fuel Gas Co. v. Battle*, 153 W.Va. 222, 167 S.E.2d 890 (1969), cert. denied, 396 U.S. 116, 90 S.Ct. 398 (1969). The Commission has continuing authority under *Code* §24-2-12 to determine whether a contract between two utilities is fair and reasonable, that neither party is given an undue advantage over the other, and that the transaction does not adversely affect the public in this state. The Commission is imbued with the requisite authority to void any contract by and between two public utilities, if the contract is found to be against the public interest. See, *Lockard v. City of Salem*, 127 W.Va. 237, 32 S.E.2d 568 (1944) and *City of South Charleston v. West Virginia Public Service Commission and Green Valley Community Public Service District*, 204 W.Va. 566, 514 S.E.2d 622 (1999).

It is incorrect to say that, just because the Commission authorized a utility to enter into an agreement, the Commission may never look at such document again. Circumstances change and it may well become advantageous to again review the content of an agreement between two utilities. Though, as a general rule, public utilities have the right to enter into contracts between themselves or with others, free from the control or supervision of the state, so long as such contracts are not unconscionable or oppressive and do not impair the obligation of the utility to discharge its public duties, the principal is firmly established that all contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary; and when such contracts are the subject of statutory regulation, no contract for service may be made by a public utility except as provided by law, although an otherwise valid contract is binding on the parties to it until a departure from such contract has been directed by competent authority. See, *Preston County Light and Power Company v. Renick*, 113 S.E.2d 378 (W.Va., 1960).]

The Commission does not technically approve agreements between utilities. *Code* §24-2-12 provides that utilities must obtain the prior "consent and approval" of the Commission to enter into agreements, e.g., the contract between Gilbert and the JPSD, with another utility. Said "consent and approval" is given "without approving the terms and conditions thereof." The real issue becomes whether the agreement runs counter to the public interest and thus should be modified as recommended by Staff, i.e., to eliminate the contract resale rate for the JPSD and replace it with the Staff-recommended resale rate.

In *Kopperston Public Service District and Town of Oceana*, Case No. 04-0473-W-PWD-SC, 2004 W. Va. PUC LEXIS 5730, Commission Order entered December 3, 2004, the Commission held that the Commission may modify the terms of a contract if the public interest is subject to harm. In *City of Mullens v. Power Co.*, 122 W. Va. 179, 7 S.E.2d 870 (1940), the Court held that "It is the

policy of the law of this state that all public utilities, whether publicly or privately owned, shall be subject to the supervision of the Public Service Commission.”

Accordingly, the Commission is authorized to supplant the contract rate between Gilbert and the JPSD, since public policy requires it. Facts and circumstances have changed since the contract rate was first approved by the Commission in 1993. Most significantly, Gilbert has been operating at a substantial cash flow deficit for several years. It is clear that Gilbert needs a rate increase. By Staff’s analysis, Gilbert’s ordinance is not sufficient to eradicate that cash flow deficit. In order to be just and reasonable to all customer classes of Gilbert, Staff had to perform a customer class cost of service study to design new rates. To leave out the resale customer class from that cost of service study would flaw the study. Also, the change in the contract rate in 1998, from \$1.40 per 1,000 gallons to \$1.57 per 1,000 gallons, was not approved by the Commission. That agreement between Gilbert and the JPSD apparently was not even reduced to writing, let alone approved by the Commission.

Since Gilbert has stipulated to and accepted the Staff-recommended revenue requirement, rate design and rates and charges; since no customer protested the rate ordinance or appeared at the hearing to object, except for the Mingo County Public Service District, as receiver for the Justice Public Service District; since no evidence was presented to show that the Staff-recommended revenue requirement is incorrect; and since the Staff-recommended rates are based upon a customer class cost of service study, the ALJ holds that Commission Staff has established a *prima facie* case that the contract rate should be annulled and that the resale rate contained in the Staff-recommended rates, as well as the other Staff-recommended rates and charges, should be adopted in this matter.

Essentially, the burden of proof has shifted to the lone Protestant/Intervenor, i.e., the Mingo County Public Service District, as receiver for the Justice Public Service District. The only way that the District (or the JPSD) could rebut the resale rate contained in the Staff-recommended rates is to show that the customer class cost of service study is inherently flawed or contains material errors which render it unreliable. The ALJ cannot identify any evidence which tends to show that the cost of service study is inherently flawed or contains material errors which render it unreliable.

However, further analysis is required in light of the Commission Order entered on August 19, 2008, in Case No. 07-0175-PWD-19A, *Claywood Park Public Service District*, which held that the rates for a publicly-owned utility should be designed to produce sufficient, but not more than sufficient, cash to pay operating expenses, taxes, principal and interest on debt, deposits into restricted reserves required by debt agreements, and, after making those payments, result in a reasonable level of cash flow for ongoing normal capital additions. Most importantly, the cash flow surplus, **in concert with available funds in a renewal and replacement fund**, should be sufficient to pay ongoing normal capital additions. The ALJ believes that the Staff-recommended revenue requirement in this case appears to substantially comply with the criteria of the *Claywood Park* case. Staff’s engineering review recommended a cash flow surplus of not less than \$8,000, based on previous plant additions and system needs. (See, Staff Exhibit No. 2, Letter of Transmittal, p. 2). The actual cash flow surplus recommended by Staff under the Phase I rates was \$10,789 and \$12,069 for the Phase II post-project rates. While Staff did employ the methodology denounced as arbitrary and

unreasonable by the Commission in the *Claywood Park* case to recommend a cash flow surplus for Gilbert, i.e., 1/12 of Gilbert's O&M expenses and taxes, the ALJ does not believe that the difference between the cash flow surplus based on plant additions and the 1/12 formula is significant enough to warrant rejecting the Staff-proposed cash flow surplus.

In the *Claywood Park* case, the Commission acknowledged that Staff and other parties should be allowed to present alternative methods of calculating ongoing capital additions if Staff or the party believes such alternative methods are more appropriate in a given case than the Commission's method. However, such presentations should be in addition to, and not instead of, the Commission-prescribed method. The Commission also noted that, when departing from the Commission's preferred method for calculating annual normal, ongoing capital additions, justification for a recommended alternative calculation must be clearly and fully presented and the Staff or party presenting the alternative calculation must demonstrate that the calculation represents expected future capital additions that will require internal cash flow on an annual basis. Also, the ALJ Division should consider any alternative calculations of ongoing normal capital additions, but they should not be accepted unless they are supported by substantial evidence set forth in the Order.

At least part of the thrust of the *Claywood Park* decision dealt with permitting publicly-owned utilities to have a large cash flow surplus while having money available for use for plant additions in a renewal and replacement fund which can and should be used to pay for replacements, repairs, improvements or extensions to the system. This is not the case at the present with Gilbert, since it has no long-term debt and has no renewal and replacement fund from which to use for plant additions. This becomes somewhat problematic once the project is completed and the second phase of rates apply. For that reason, Gilbert should consider revisiting its rates and revenue requirement once it has operated for a year under the second phase of the rates.

Based on Staff's analysis, the rate ordinance passed by Gilbert actually would have reduced, but not eliminated, a cash flow deficit, which is a reason to reject the ordinance. At going-level, Gilbert would experience a \$24,703 cash flow deficit, which is very significant, given that Gilbert's total available cash at going-level is only \$101,750. Since Gilbert's total revenue requirement has not been challenged, i.e., the only issue raised or developed by the District/JPSD was the creation of a resale rate based on an ordinance and/or a cost of service study, as opposed to keeping a negotiated contract resale rate, the ALJ believes that he should adopt the Staff-recommended revenue requirement.

Having considered all of the above, the ALJ holds that, under the specific facts of this case, the Staff-recommended revenue requirement for Gilbert, both prior to the project completion and afterwards, substantially complies with the Commission's requirements under the *Claywood Park* case. Since no evidence was presented to rebut the cost of service study and since the Staff-recommended rates and charges are based on the cost of service study, the ALJ will adopt the Staff-recommended rate design, including the resale rate, and will approve the Staff-recommended rates and charges contained in Appendix A for all service rendered on and after 12:01 a.m., September 27, 2008, and will approve the Staff-recommended rates and charges contained in Appendix B for all service rendered on and after the date that the certificate project is certified as substantially complete.

## FINDINGS OF FACT

1. The Town of Gilbert adopted an ordinance increasing its rates and charges to provide water service to its customers inside and outside its corporate boundaries, to become effective May 30, 2008. After Gilbert published a notice of these rates, on or about May 14, 2008, the Mingo County Public Service District, as receiver for the Justice Public Service District, a resale customer of Gilbert, submitted a petition to the Public Service Commission protesting Gilbert's April 15, 2008 rate ordinance, alleging discrimination to its customers and opposing granting any emergency interim rate relief. Pursuant to the protest and *Code* §24-2-4b, the Commission invoked its jurisdiction over the municipal appeal, making Gilbert a Respondent to this proceeding, suspending the aforesaid rate ordinance and deferring the use of the rates and charges stated in the rate ordinance until 12:01 a.m., September 27, 2008. (See, April 15, 2008 rate ordinance; May 15, 2008 Commission Order Suspending Rates and Referring to Administrative Law Judge).

2. Staff analyzed Gilbert's financial books and records for the test year ended on June 30, 2007, making per books adjustments to make the information contained in Gilbert's financial books and records properly reflect the correct line items and classifications. Staff made going-level adjustments to reflect known and measurable changes in expenditures that are reasonable. The Staff-recommended rates were designed using a customer class cost of service study prepared by Staff. The Staff-recommended rates are to be phased in with two steps. The first phase is to cover the cost of service prior to completion of a line extension project and the second phase is to cover the cost of service after the project is completed. The first phase of the Staff-recommended rate increase is needed irrespective of whether Gilbert builds the project. The second phase is needed only if Gilbert obtains the requisite certificate and builds the project. (See, Tr., pp. 19-23; Staff Exhibit No. 1).

3. At going-level, Gilbert's total revenue requirement is \$101,750. Gilbert's ordinance would increase that amount to \$127,781 for the first phase and to \$169,331 for the second phase. The Staff-recommended rates would increase the revenue requirement to \$141,052, which is \$39,302, or approximately 39%, above going-level, for the first phase and to \$187,609, or an additional \$46,557 or 33%, for the second phase. Altogether, the second phase rates would be \$85,859, or 84%, above going-level. At going-level, Gilbert is operating at a \$24,703 cash flow deficit. Gilbert currently has no long-term debt, but would incur long-term debt once the certificate project is authorized and completed. After paying all O&M expenses and taxes, the first phase Staff-recommended rates would provide a \$10,789 cash flow surplus. The second phase Staff-recommended rates would provide a \$12,069 cash flow surplus and provide a 178% debt service coverage ratio. (See, Tr., pp. 23-26; Staff Exhibit No. 1).

4. Gilbert has not yet refunded to the JPSD the sum of \$2,105 as a result of over-billing the JPSD. Staff recommended that Gilbert make this refund in 12 equal monthly installments in the form of a credit to the JPSD's bill. Staff recommended that the resale rate to the JPSD be increased in phase one from \$1.57 per 1,000 gallons to \$2.36 per 1,000 gallons and, in phase two, to \$2.75 per 1,000 gallons. The ordinance passed by Gilbert was intended to cover the current O&M expenses and taxes and to cover the additional O&M expenses, taxes and debt service required as a result of the certificate project. According to the Staff-recommended cash flow analysis, the refund by Gilbert to

the JPSD would have to be paid out of the surplus. For this reason, the surplus during the first year would be approximately \$8,600, and thereafter, until the project is completed, the surplus would be approximately \$10,789. The Staff-recommended surplus reflects 1/12 of Gilbert's O&M expenses and taxes. The rate ordinance passed by Gilbert actually would have created a cash flow deficit. (See, Tr., pp. 26-31; Staff Exhibit No. 1).

5. Gilbert currently does not have a renewal and replacement fund. Based on previous plant additions and the needs of the system, Staff recommended an annual surplus of at least \$8,000. (See, Staff Exhibit No. 1, Transmittal Letter, p. 2).

6. In the customer class cost of service study, the Staff-prepared engineering allocation factors are used to determine the amount of revenue required from each customer class, so that rates can be designed based upon the cost of service for each respective customer class. Each customer class places different demands on the water system, which translates to different costs to serve each class. The water treatment plant and distribution system have to be designed to accommodate the various demands placed on the system by the different customer classes at different times of the day. It costs more to provide service at peak demand times. The allocation factors consider all known cost factors for each respective customer class, including the peak daily demands, the peak hourly demands, administration costs, commodity demands and customer demands. These demands are expressed in percentages or factors and are used to allocate the costs to each customer class, i.e., the residential, commercial, industrial and resale classes. (See, Tr., pp. 39-42; Staff Exhibit No. 1).

7. Staff developed the allocation factors for the customer class cost of service study used in this case by adapting the Gannett-Fleming study performed for a West Virginia-American Water Company case in 2001. The Commission generally has accepted the Gannett-Fleming study as representative of the various demands placed on most water systems in the state. Staff opined that the Gannett-Fleming study is the best available set of data to use to develop engineering allocation factors for the instant case. The Gannett-Fleming study used data from many different water systems across the state. (See, Tr., pp. 42-47; Staff Exhibit No. 1).

8. Gilbert's unaccounted-for water was approximately 29.7% for the test year, which is higher than the Commission-allowed 15%. The new line extension project is projected to decrease the unaccounted-for water to about 28.3%. Staff opined that, since the JPSD uses Gilbert's water distribution system, the JPSD should help pay for the unaccounted-for water. Using Staff's calculations, the percentage of unaccounted-for water is 12.34% for the resale class. Residential unaccounted-for water is approximately 56% and commercial unaccounted-for-water is approximately 31%. (See, Tr., pp. 47-51).

9. In developing the engineering allocation factors, Staff did not take into account the fact that Gilbert's current rate for its resale customer was negotiated by contract. The contract set a rate of \$1.40 per 1,000 gallons and stated, "It is hereby specifically acknowledged and agreed by the parties that the aforementioned rate is determined by reference to Seller's cost of producing water, without including all expenses of Seller's water system, such as maintenance, parts, gasoline, postage, payroll and taxes, debt service, capital expenditures and other matters that would not be properly

includable in determining Seller's cost of producing water." The methodology set forth in the contract for determining the resale rate is not the methodology followed by Commission Staff. Staff did not consider the methodology contained in the contract in developing the engineering allocation factors for the customer class cost of service study. (See, Tr., pp. 52-56; District Exhibit No. 1).

10. Staff did not give the JPSD any type of credit for building and contributing a water transmission line to Gilbert's system, which Staff opined is proper. Staff opined that all customer classes, including the resale class, should pay for the operation and maintenance of that line. (See, Tr., pp. 62-64).

11. The Staff-recommended rates do not cause the JPSD to pay for that water transmission line twice. The JPSD decided to contribute that line to Gilbert's operation in exchange for obtaining water for resale to its customers. Now, Gilbert owns the line and all customer classes are responsible for its operation and maintenance. (See, Tr., pp. 64-69).

12. Under the Staff-recommended phase two rates, the JPSD will be paying for a share of the anticipated certificate project costs. (See, Tr., pp. 69-70).

13. The pending certificate project will add approximately 172 new customers to Gilbert's customer base. The project is not needed in order to serve the JPSD, although the new storage tank might benefit the JPSD. (See, Tr., pp. 71-75).

14. Using the class cost of service study, Staff designed rates for Gilbert that will generate all of the revenue needed by Gilbert; ensure that each customer class pays its fair share of the costs; and ensure that no customer class subsidizes another customer class. The allocation factors are used to calculate the cost to serve each customer class. Rates are designed that will generate the revenues needed to cover the costs associated with each respective customer class. At per books, the revenue generated by the residential class is approximately \$52,330, but the study shows that the residential class should be generating approximately \$64,063. Likewise, the commercial class currently is generating approximately \$29,058, but should be generating \$39,060. The resale class currently is generating \$18,436, but should be generating \$35,474, according to the customer class cost of service study. Similarly, after the certificate project is completed, the second phase of the Staff-recommended rates were designed to generate the revenue required by each customer class as it would exist at that time. (See, Tr., pp. 77-81; Staff Exhibit No. 1, p. 61).

15. The amount of revenue allocated to the resale class actually is lower after the project than before the project. For this reason, Staff has recommended phasing in the increase to the resale class, i.e., recover approximately \$27,712 from the resale class prior to the completion of the project and recover approximately \$32,000 from the resale class after the project, rather than going to approximately \$35,474 immediately and then reducing it to \$32,000 after the project is built. Staff used this methodology to design the rates so as to reduce the rate shock to the resale class. (See, Tr., pp. 77-81; Staff Exhibit No. 1).

16. Adding the new customers to Gilbert's customer base is one reason the allocated share for the resale class would be lower after the project is built. Also, more costs of the project are allocated to the residential and commercial classes because those are the customer classes who will benefit most from the project. Adding 170 new customers to Gilbert's existing customer base of approximately 240 customers is a significant customer increase. In order to facilitate the lessening of the rate shock to the resale class, Staff has increased the rates more for the residential and commercial classes in the first phase of the rate increase, e.g., the residential class should generate approximately \$64,000, but, under the Staff-recommended rates, would generate about \$70,000. The Staff-recommended rates generally follow the cost of service study, except that they reduce the rate shock for the resale class. (See, Tr., pp. 81-85, 96-99; Staff Exhibit No. 1).

17. The Staff-recommended rates do require the residential and commercial classes to subsidize the JPSD for a temporary period, until the project is completed, after which each customer class will be paying its respective fair share. (See, Tr., pp. 85-96, 99-100).

18. If an existing contract rate does not produce the revenue needed for the municipality, new rates should be designed based on a cost of service study, or, as in this case, by a hybrid approach to the cost of service study rates, i.e., reducing the rate shock to the resale customer in the phase one rates. In order to perform a cost of service study, all customer classes must be included, not just some customer classes. (See, Tr., pp. 100-107).

19. Gilbert's current tariff on file with the Commission does not contain a resale rate. Staff is recommending a resale rate in order to fairly recover the costs from all customer classes, rather than rely upon the contract rate, which Staff believes is inadequate to recover the cost to serve the resale class. (See, Tr., pp. 107-110).

20. Several years ago, the Justice Public Service District defaulted on its loan from the WDA, and, as a result, the District was appointed as the receiver of the JPSD until the District and the JPSD can be merged into one operating entity. This matter is pending bondholder approval, i.e., the District must establish that it is financially and otherwise capable of accepting the JPSD as part of the District's system. The rates for the JPSD are lower than those of the District, which are among the highest in West Virginia. Any increase in Gilbert's resale rate will affect only the approximately 240 customers of the JPSD, not the District's direct customers. (See, Tr., pp. 112-113, 122).

21. The JPSD purchases all of its water from Gilbert as a resale customer. The current rate is determined by a contract between the JPSD and Gilbert. The current contract rate is \$1.57 per 1,000 gallons. (See, Tr., pp. 113-114).

22. Gilbert's resale rate was first established and approved by the Commission by a Recommended Decision entered on May 21, 1993, final on May 29, 1993, in Case No. 91-829-PWD-CN, *The Justice Public Service District*, which approved a contract between Gilbert and the JPSD. (See, Tr., pp. 115-118; District Exhibit No. 4).

23. The JPSD is delinquent on its payments to Gilbert. The payment from the JPSD constitutes a substantial portion of Gilbert's total income. The JPSD built the eight-inch line described in the contract and turned ownership over to Gilbert. (See, Tr., pp. 120-125; District Exhibit No. 1).

24. Gilbert is proposing to build a mainline extension along State Route 80 between Gilbert and the Logan County line, which will add approximately 172 new customers to Gilbert's customer base. The line extension is not within the District's service territory. The JPSD would benefit from the project since it includes a new water storage tank to be located near the Gilbert town limits. Adding a third water storage tank to Gilbert's system will increase the system's total system reliability. The water line currently serving the JPSD is sufficient to adequately serve the needs of the JPSD. Gilbert is painting and refurbishing its existing water storage tanks. The project will include adding telemetry to the water treatment plant, which will enable Gilbert to provide more reliable water service to all of its customers, including the JPSD. (See, Tr., pp. 126-130).

25. While the JPSD has its own water storage tank, that tank would be sufficient for its needs only if Gilbert can consistently pump water to the JPSD's tank. The fact that the JPSD has its own tank does not mean that the JPSD would not benefit from Gilbert adding a third tank to its system. All three of Gilbert's tanks will be at the same altitude and will be interconnected, which will effectively make the three act as one large tank. The third tank would not be needed if Gilbert was not adding the 172 new customers, but adding a third tank does make Gilbert's system more reliable and dependable, for all of Gilbert's customers. (See, Tr., pp. 131-134; District Exhibit No. 4).

26. The JPSD often does not abide by the terms of the contract, e.g., the JPSD does not always pay on time or pay all that is owed. The JPSD has been late nine times since July 2007. On the day of the hearing, the JPSD owed Gilbert \$5,733.17. The bill to the JPSD represents about 1/4 of Gilbert's billing. Gilbert sent the District a letter about the delinquency during 2008, but has not received a response. (See, Tr., pp. 140-145; District Exhibit No. 1).

27. On August 17, 1998, after a Gilbert rate ordinance had been passed to increase the rates of Gilbert's other customers, Gilbert and the JPSD renegotiated the resale contract rate, increasing it from \$1.40 per 1,000 gallons to \$1.57 per 1,000 gallons. When Gilbert passed the instant rate ordinance, it increased the resale rate by the same percentage as its other customers. (See, Tr., pp. 145-150, 152-155).

28. Gilbert could not explain why the Staff Report indicated that Gilbert had billed the JPSD for varying amounts during the test year, e.g., \$1.57 per 1,000 gallons one month, \$1.82 per 1,000 gallons another month, \$1.63 per 1,000 gallons another month and so forth, except possibly due to a computer error. Gilbert recently acquired a new computer system which has corrected that discrepancy. (See, Tr., pp. 150-152).

## CONCLUSIONS OF LAW

1. The Commission is vested with the requisite authority to review the terms of a contract between two utilities and determine whether there are terms contained in the contract over which the Commission should exercise authority. See, *Code* § 24-2-12. See also, *United Fuel Gas Co. v. Battle*, 153 W.Va. 222, 167 S.E.2d 890 (1969), cert. denied, 396 U.S. 116, 90 S.Ct. 398 (1969).

2. The Commission has continuing authority under *Code* §24-2-12 to determine whether a contract between two utilities is fair and reasonable, that neither party is given an undue advantage over the other, and that the transaction does not adversely affect the public in this state. The Commission is imbued with the requisite authority to void any contract by and between two public utilities, if the contract is found to be against the public interest. See, *Lockard v. City of Salem*, 127 W.Va. 237, 32 S.E.2d 568 (1944) and *City of South Charleston v. West Virginia Public Service Commission and Green Valley Community Public Service District*, 204 W.Va. 566, 514 S.E.2d 622 (1999).

3. When circumstances change, the Commission may revisit a contract it approved in the past, since the principal is firmly established that all contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary; and when such contracts are the subject of statutory regulation, no contract for service may be made by a public utility except as provided by law, although an otherwise valid contract is binding on the parties to it until a departure from such contract has been directed by competent authority. See, *Preston County Light and Power Company v. Renick*, 113 S.E.2d 378 (W.Va., 1960).]

4. The Commission may modify the terms of a contract if the public interest is subject to harm. See, *Kopperston Public Service District and Town of Oceana*, Case No. 04-0473-W-PWD-SC, 2004 W. Va. PUC LEXIS 5730, Commission Order entered December 3, 2004.

5. It is the policy of the law of this state that all public utilities, whether publicly or privately owned, shall be subject to the supervision of the Public Service Commission. See. *City of Mullens v. Power Co.*, 122 W. Va. 179, 7 S.E.2d 870 (1940).

6. Rates for a publicly-owned utility should be designed to produce sufficient, but not more than sufficient, cash to pay operating expenses, taxes, principal and interest on debt, deposits into restricted reserves required by debt agreements, and, after making those payments, result in a reasonable level of cash flow for ongoing normal capital additions. A cash surplus for those ongoing additions should be the total of cash available in a renewal and replacement fund plus the remaining cash surplus generated by the rates. See, Commission Order entered on August 19, 2008, in Case No. 07-0175-PWD-19A, *Claywood Park Public Service District*.

7. It is reasonable to conclude that the Staff-recommended cash flow surplus in this case substantially complies with the criteria of the *Claywood Park* case.

8. Since Gilbert has stipulated to and accepted the Staff-recommended revenue requirement, rate design and rates and charges; since no customer protested the rate ordinance or appeared at the hearing to object, except for the Mingo County Public Service District, as receiver for the Justice Public Service District; since no evidence was presented to show that the Staff-recommended revenue requirement is incorrect; and since the Staff-recommended rates are based upon a customer class cost of service study, it is reasonable to hold that Commission Staff has established a *prima facie* case that the contract rate should be annulled and that the resale rate contained in the Staff-recommended rates, as well as the other Staff-recommended rates and charges, should be adopted in this matter.

9. The only way that the District (or the JPSD) could rebut the resale rate contained in the Staff-recommended rates is to show that the customer class cost of service study is inherently flawed or contains material errors which render it unreliable. No evidence in this proceeding shows that the cost of service study is inherently flawed or contains material errors which render it unreliable.

10. Since the rate ordinance passed by Gilbert would have reduced, but not eliminated, a cash flow deficit, it is reasonable to reject the ordinance.

11. Since, at going-level, Gilbert would experience a \$24,703 cash flow deficit; since Gilbert's total revenue requirement has not been challenged, i.e., the only issue raised or developed by the District/JPSD was the creation of a resale rate based on an ordinance and/or a cost of service study, as opposed to keeping a negotiated contract resale rate, it is reasonable to adopt the Staff-recommended revenue requirement.

12. Under the specific facts of this case, it is reasonable to approve the Staff-recommended revenue requirement for Gilbert, both prior to the project completion and afterwards, since it substantially complies with the Commission's requirements under the *Claywood Park* case.

13. Since no evidence was presented to rebut the cost of service study and since the Staff-recommended rates and charges are based on the cost of service study, it is reasonable to adopt the Staff-recommended rate design, including the resale rate, and to approve the Staff-recommended rates and charges contained in Appendix A for all service rendered on and after 12:01 a.m., September 27, 2008, and to approve the Staff-recommended rates and charges contained in Appendix B for all service rendered on and after the date that the certificate project is certified as substantially complete.

## ORDER

IT IS, THEREFORE, ORDERED that the ordinance adopted on April 15, 2008, by the Town of Gilbert, increasing its rates and charges to provide water service to its customers inside and outside its corporate boundaries, to become effective May 30, 2008, be, and hereby is, rejected and set aside.

IT IS FURTHER ORDERED that the Staff-recommended revenue requirement and rate design be, and hereby are, approved.

IT IS FURTHER ORDERED that the rates and charges contained in Appendix A be, and hereby are, approved for all water service rendered by the Town of Gilbert on and after 12:01 a.m., September 27, 2008.

IT IS FURTHER ORDERED that, within thirty (30) days of this Recommended Decision becoming final, the Town of Gilbert file with the Commission an original and at least five copies of a proper tariff setting forth the rates and charges hereby approved for use after 12:01 a.m., September 27, 2008.

IT IS FURTHER ORDERED that the rates and charges contained in Appendix B be, and hereby are, approved for all water service rendered by the Town of Gilbert on and after the date that the water mainline extension project which is pending before the Commission for a certificate in Case No. 08-0411-W-CN, *Town of Gilbert Water Works* is certified as substantially complete.

IT IS FURTHER ORDERED that, within thirty (30) days of the date that the certificate project pending in Case No. 08-0411-W-CN is certified as substantially complete, the Town of Gilbert file with the Commission an original and at least five copies of a proper tariff setting forth the rates and charges in Appendix B.

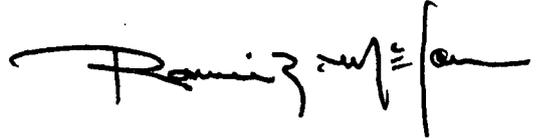
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

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

Leave hereby is 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 Recommended Decision 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 Recommended Decision 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 recommended decision by filing an appropriate petition in writing with the Executive 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 recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



**Ronnie Z. McCann**  
Deputy Chief Administrative Law Judge

RZM:s  
080786ac.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON**

TOWN OF GILBERT, a municipal corporation, Mingo County.

Investigation and suspension of increase in water rates and charges as a result of petitions filed in accordance with *West Virginia Code* §24-2-4b.

**PHASE I**  
**APPROVED RATES**

**APPLICABILITY**

Applicable within the entire service territory.

**AVAILABILITY**

Available for general domestic, commercial, industrial and sale for resale water service.

**RATES**

|  |                          |
|--|--------------------------|
| First 2,000 gallons used per month     | \$8.05 per 1,000 gallons |
| Next 2,000 gallons used per month      | \$6.50 per 1,000 gallons |
| Next 6,000 gallons used per month      | \$4.40 per 1,000 gallons |
| Next 10,000 gallons used per month     | \$3.40 per 1,000 gallons |
| All over 20,000 gallons used per month | \$2.95 per 1,000 gallons |

**MINIMUM CHARGES**

No minimum bill will be rendered for less than the following amounts based on meter size:

|                  |                    |
|------------------|--------------------|
| 5/8-inch meter   | \$ 16.10 per month |
| 3/4-inch meter   | \$ 24.15 per month |
| 1-inch meter     | \$ 40.25 per month |
| 1-1/2-inch meter | \$ 80.50 per month |
| 2-inch meter     | \$128.80 per month |
| 3-inch meter     | \$241.50 per month |
| 4-inch meter     | \$402.50 per month |
| 6-inch meter     | \$805.00 per month |

**SALES FOR RESALE**

All water for resale will be billed in accordance with the approved rate of \$2.36 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

**RECONNECTION CHARGE**

\$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

**TAP FEE**

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the City up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

**LEAK ADJUSTMENT**

\$0.67 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

**SECURITY DEPOSIT**

A deposit of \$50.00 or 1/6 of the average annual usage of the applicant's specific customer class, whichever is greater.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON**

TOWN OF GILBERT, a municipal corporation, Mingo County.

Investigation and suspension of increase in water rates and charges as a result of petitions filed in accordance with *West Virginia Code* §24-2-4b.

**PHASE II**  
**APPROVED RATES**

**APPLICABILITY**

Applicable within the entire service territory.

**AVAILABILITY**

Available for general domestic, commercial, industrial and sale for resale water service.

**RATES**

|  |                          |
|--|--------------------------|
| First 2,000 gallons used per month     | \$8.10 per 1,000 gallons |
| Next 2,000 gallons used per month      | \$6.50 per 1,000 gallons |
| Next 6,000 gallons used per month      | \$4.40 per 1,000 gallons |
| Next 10,000 gallons used per month     | \$3.50 per 1,000 gallons |
| All over 20,000 gallons used per month | \$3.00 per 1,000 gallons |

**MINIMUM CHARGES**

No minimum bill will be rendered for less than the following amounts based on meter size:

|                  |                    |
|------------------|--------------------|
| 5/8-inch meter   | \$ 16.20 per month |
| 3/4-inch meter   | \$ 24.30 per month |
| 1-inch meter     | \$ 40.50 per month |
| 1-1/2-inch meter | \$ 81.00 per month |
| 2-inch meter     | \$129.60 per month |
| 3-inch meter     | \$243.00 per month |
| 4-inch meter     | \$405.00 per month |
| 6-inch meter     | \$810.00 per month |

**SALES FOR RESALE**

All water for resale will be billed in accordance with the approved rate of \$2.75 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

**RECONNECTION CHARGE**

\$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

**TAP FEE**

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the City up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

**LEAK ADJUSTMENT**

\$0.67 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

**SECURITY DEPOSIT**

A deposit of \$50.00 or 1/6 of the average annual usage of the applicant's specific customer class, whichever is greater.

**THE TOWN OF GILBERT**  
**PO BOX 188**  
**GILBERT, WV 25621**

**Re-Scheduled Meeting, September 18, 2008**

*On Sept. 18, 2008, at 6:45 p.m. the Gilbert Town Council held its regular meeting at the Gilbert Town Hall. Present in addition to Council members Michael Fox, Penny Sammons, Vivian Livingood, and Sharon Murphy was the following; Attorney Rick Staton, James Deel, Randy Livingood, Ricky Toler, Brett Browning, Candita Harding, JB Hatfield, and Gary Facemyer.*

*Prayer was led by Victoria Surber.*

*Town Secretary asked that the council go into executive session. Vivian Livingood made the motion to go into executive session at 6:50 pm with Sharon Murphy seconding the motion carried. Motion carried.*

*Penny Sammons made the motion to come out of executive session at 7:00 p.m. with Vivian Livingood seconding the motion. Motion carried.*

*Vivian Livingood was then asked to read the letter (please see attachment) stating that John W. White was resigning his position as Mayor for the Town of Gilbert due to health reasons. Vivian Livingood made the motion to accept his resignation with Penny Sammons seconding the motion. Motion carried.*

**FINANCIAL STATEMENTS**

*Vivian Livingood made several inquiries about items on the financial statements. After town secretary answered the questions Vivian Livingood made the motion to accept the financial statements with Penny Sammons seconding the motion. Motion carried.*

**MINUTES OF PREVIOUS MEETING**

*Vivian Livingood made the motion to accept the minutes of the previous meeting. Sharon Murphy seconded the motion. Motion carried.*

**EL ROBINSON**

*Gary Facemyer then addressed the council about the tank 1 and tank 2. He also informed the council about the painting and that the inspector was on site at the site.*

*Tank #2 is now out of service due to the paint and refurbishing. Mr. Facemeyer then stated that he is expecting the tank to be completed around Oct. 1, 2008.*

*On the Slabtown project, Mr. Facemeyer explained that he is still in negotiations with some of the landowners and that Mr. Staton would still need to work on the easements.*

*As for the Horsepen project, we will be applying for the ARC grant to enable us to have the funding for the project. He further stated that they were still looking for an adequate tank site for the water tank in the Horsepen area.*

*Victoria Surber then addressed the council thanking them for the position of administrative assistant for the town.*

*Vivian Livingood then addressed the council about the clean up of the town. She informed everyone that she would be asking that the Judge's Work Crew come to Gilbert to cut the weeds for Trailfest. Council further stated that a letter should be sent to McDonald's corporation on the garbage at their business site and asking them to clean the area. After much discussion council agreed to send a letter to all business owners asking them to clean up around their businesses.*

#### HATFIELD-MCCOY TRAILFEST

*Council then asked Ms. Carter, Administrative Assistant, to check with our insurance company to make sure that it would be approved to allow self-contained campsites at the town hall properties. Michael Fox made the motion to allow the campsites at town hall property if the insurance company would allow this. Sharon Murphy seconded the motion. Motion carried.*

*Sharon Murphy made the statement that she might possibly be able to free up some additional property for self-contained campsites.*

*Vivian Livingood then stated to the council that the CVB would be donating \$1000.00 for the fireworks at Trailfest and that Councilperson Sharon Murphy had also secured \$1000.00 for fireworks from the LJHCC and asked that the council donate \$1000.00 from the town. Sharon Murphy made the motion to donate the monies from the general fund for the fireworks with Penny Sammons seconding the motion. Motion carried. Council was then advised that the check payable to the fireworks company would come out of the general fund due to the regulations of the company which we are purchasing the fireworks from. The donated monies for the fireworks could be put into the general fund.*

#### FIRE DEPT.

*Rick Toler, asst. chief of the fire dept., then addressed the council about the fire association having additional insurance which would be a supplement to the insurance and comp. The cost of the insurance would be \$750.00 per year. Penny Sammons asked*

*that this be tabled until Attorney Staton could check on this. Agent for the insurance policy was JW Hughes.*

*Mr. Toler then brought up the subject of the roof on the fire house and the need for replacement. The cost for a metal roof, according to the sole bid which Mr. Toler had received, was \$22,000.00; shingles was \$20,000.00 and overshingle. Mr. Toler further stated that Stafford EMS would be paying half of the bill due to the original agreement which states that Stafford will pay for ½ of the cost of the building upkeep.*

*Council asked that Mr. Toler run an ad in the paper asking for sealed bids on this project due to the fact that it is a town building and that it exceeds the \$5000.00 rule.*

*Mr. Toler asked that council consider allowing the fire dept. to have another road stop in Nov. to assist with the costs obtaining new equipment for the new members.*

*Council then addressed the fact that one of the previous members had charged a large sum of gas to the fire dept. account at The Pit Stop. At this time no action has been taken against the individual. This will need to be taken to the police dept. for prosecution.*

## POLICE

*Police Chief B. Browning then addressed the council about the Gilbert Police Dept. Chief Browning informed the council that Larry Thomas had graduated the police academy and that Shirl Musick as of this date has resigned his position as police officer due to the fact that he was being informed by the academy that he would need to turn in his information on going to the academy. Mr. Musick would be unable to attend due to financial reasons.*

*Chief Browning then informed council that the police cruiser should be out of the body shop from the repairs by Trailfest.*

*Due to the size of their present office and lack of an air conditioner, Chief Browning asked council if they could move their office to the lower part of the building. Vivian Livingood stated that she would make the motion to allow the police dept. to move into that section with Penny Sammons seconding the motion. Motion carried.*

*A motion was then made by Vivian Livingood to allow overtime during Trailfest weekend. Sharon Murphy seconded the motion. Motion carried.*

*After a discussion about the fact that the police dept. will be needing a 4 wheel drive during the winter months, Sharon Murphy stated that she would write a letter to N&W to ask for a donation of a used vehicle for the police dept. Ms. Murphy has been extremely helpful in the past on assisting us in receiving vehicles from N&W.*

### WATER DEPT.

*James Deel gave the town council an update on the water dept. and stated that he was concerned about the seismic testing which will be conducted in the near future. Mr. Deel is concerned that because the water lines are so aged, he fears that this could cause either a main water break or several leaks. Council asked if Attorney Staton would contact this company and ask that they not test within the town limits due to the age of the water lines. Vivian Livingood made the motion to allow James Deel to order del pac with Sharon Murphy seconding the motion. Motion carried.*

*James then explained that the reason for the water loss going up was due to the fact that they had recently filled up the new tank with water.*

*Vivian Livingood then made the motion to accept the resolution for the water rates with Sharon Murphy seconding the motion. Motion carried.*

*Penny Sammons then made the motion to allow Vivian Livingood and Michael Fox to sign any and all documents concerning the water projects. Sharon Murphy seconded the motion. Motion carried.*

*Vivian Livingood made the motion to sign the budget revision for the 07-08 budget with Sharon Murphy seconding the motion. Motion carried.*

*Penny Sammons then asked council to reimburse her for the coffee pot and supplies for the recent celebration of the USDA Loan monies. This Bunn coffee maker will stay at Town Hall for future events. Vivian Livingood made the motion to pay Ms. Sammons the sum of \$289.00 for her expense with Sharon Murphy seconding the motion. Motion carried.*

### HALLOWEEN

*Council decided to celebrate Halloween night whatever night the county decides upon. Trick-or-Treat will be allowed inside town limits.*

### CHRISTMAS PARADE

*The Christmas Parade will be held on Dec 7, 2008 at 2:00 p.m. with the town hall offices making all of the arrangements.*

### CVB

*Ms. Livingood announced that the CVB room is open and ready for business. She further asked for everyone to stop by and enjoy the renovations. She further asked that everyone who has any business cards or brochures please stop by with them.*

## RENOVATIONS

*Vivian Livingood asked that the council please serve on a renovations committee so that we could best utilize the \$30,000.00 which Delegate HK White was able to obtain for the Town Hall. Penny Sammons asked that we would consider purchasing new office desks and filing cabinets for the main offices in town hall. This was agreeable by all council members.*

*Sharon Murphy made the motion to appoint Vivian Livingood as the Mayor for the Town of Gilbert with Penny Sammons seconding the motion. Motion carried with Vivian Livingood abstaining from voting.*

*Penny Sammons made the motion to appoint Michael Fox as the Recorder for the Town of Gilbert with Sharon Murphy seconding the motion. Motion carried with Michael Fox abstaining from voting.*

*Michael Fox made the motion to appoint Randy Livingood as council member for the town with Penny Sammons seconding the motion. Motion carried with Vivian Livingood abstaining.*

*Council then decided that they would meet on Oct 1, 2008 for a council meeting.*

*Penny Sammons made the motion to allow the town to purchase 3 tons of coal and have Michael Perry to haul the coal for us. Vivian Livingood seconded the motion. Motion carried.*

*Having no further business for the council, Vivian Livingood made the motion to adjourn the meeting at 8:40 with Penny Sammons seconding the motion. Motion carried.*

---

*Vivian Carter, Town Clerk*

State of West Virginia, Mingo County, to-wit:

I, Gaither Perry, Publisher of Williamson Daily News, a paper published in the County aforesaid, do affirm that

Notice hereto attached was published in said paper for 2 successive weeks, the first publication thereof being on the 23rd day of September 2008 and the subsequent publication on the 30th day of September 2008, the \_\_\_\_\_ day of \_\_\_\_\_, 2008, the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

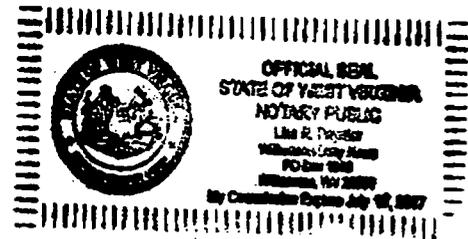
*[Signature]*

State of West Virginia, Mingo, to-wit:

\_\_\_\_\_ being duly sworn, says that he posted a copy of the annexed \_\_\_\_\_ at the front door of the Court House of said County, on the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

Taken, subscribed and sworn to before me, this 30th day of September 2008. Printer's fee \$ 334.72

*[Signature]*  
Notary Public  
MY COMMISSION EXPIRES ON 7-17-2017



G1

3046643752

09:10

10/07/2008

WEST VIRGINIA  
TOWN OF GILBERT  
NOTICE OF PROPOSED WATER  
RATE INCREASE

Notice is hereby given that upon recommendation of the Town of Gilbert, and pursuant to an application to improve and extend water services in and near the town of Gilbert, the Gilbert Town Council will review for final adoption, an ordinance containing increased rates and charges for the Town of Gilbert for furnishing water service to all its customers within the Town of Gilbert, in Lincoln County, West Virginia. Final review and adoption will take place during a Public Hearing scheduled for October 1, 2008 at 3:00 p.m. Gilbert Town Hall, Gilbert, West Virginia.

The proposed increased rates and charges will become effective in two phases. Phase One of the rates will be effective no less than forty-five days after the adoption of the ordinance. Phase Two of the rates will become effective no less than forty-five days after a certificate is filed with the Town, with copy to the Public Service Commission, by an engineer of record, indicating that the project has reached a stage of "substant-

ing, the ordinance shall become effective no less than forty-five days after adoption the filing of this certificate by the Town Council, or upon finding of "substantial completion" of the "Slabtown, Tamcliff, and Paynter Bottom Water Expansion Project." The proposed rates reflect an approximate increase of thirty-one percent for all customers: residential, commercial, industrial, government and those receiving private fire protection amounting to \$300 annually. The exact rate structure is as follows:

**WATER RATES**

The rates and charges in this Article apply to service in entire territory encompassed by the Town of Gilbert and any extensions thereto, pursuant to Phase One and Phase Two.

**AVAILABILITY OF SERVICE**

Service shall be offered and available for general domestic, commercial, and industrial and sale for resale water service.

**PHASE ONE RATES**

- First 2,000 Gallons \$8.05 per thousand gallons
- Next 2,000 Gallons \$6.50 per thousand gallons
- Next 6,000 Gallons \$4.40 per thousand gallons
- Next 10,000 Gallons \$3.40 per thousand gallons

**PHASE TWO RATES**

- First 2,000 gallons \$6.10 per thousand gallons
  - Next 2,000 gallons \$6.50 per thousand gallons
  - Next 6,000 gallons \$4.40 per thousand gallons
  - Next 10,000 gallons \$3.50 per thousand gallons
  - All over 20,000 gallons \$3.00 per thousand gallons
- MINIMUM CHARGES**  
No minimum will be rendered for less than the following amounts based on meter size:
- 5/8 inch meter- \$16.20 per month
  - 3/4 inch meter- \$24.30 per month
  - 1 inch meter- \$40.50 per month
  - 1 1/2 inch meter- \$81.00 per

**MINIMUM CHARGES**

No minimum will be rendered for less than the following amounts based on meter size:  
5/8 inch meter- \$16.10 per month  
3/4 inch meter- \$24.15 per month  
1 inch meter- \$40.25 per month  
1 1/2 inch meter- \$80.50 per month

2 inch meter- \$128.80 per month  
3 inch meter- \$241.50 per month  
4 inch meter- \$402.50 per month  
6 inch meter- \$805.00 per month

**SALES FOR RESALE**

All water for resale will be billed in accordance with the approved rate of \$2.36 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. Accounts not paid in full where due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

The utility shall not discontinue service to any customer to violation of rules and regulations or for non-payment of bills without first having tried diligently to induce the customer to comply with its rules and regulations or to pay his

The following charge is to be made whenever the utility installs a new tap to serve an applicant. A tap fee of \$100 will be charged to all customers who apply for service outside of a certificate proceeding before the Public Service Commission for each new tap to the system.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the Town up to a maximum of \$25 will be imposed upon any customer whose check for payment of charges is returned by the bank to insufficient funds.

**LEAK ADJUSTMENT**

\$0.67 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's historical average usage.

**SECURITY DEPOSIT**

A deposit of \$50 or 1/8 of the average annual usage of the applicant's specific customer class, whichever is greater.

**FIRE SERVICE PROTECTION**

Fire Hydrant Rental- \$300 per hydrant per year

- 3 inch meter- \$243.00 per month
- 4 inch meter- \$405.00 per month
- 6 inch meter- \$810.00 per month

**SALES FOR RESALE**  
All water for resale will be billed in accordance with the approved rate of \$2.75 per 1,000 gallons used per month.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

The utility shall not discontinue service to any customer for violation of rules and regulations or for non-payment of bills, without first having tried diligently to induce the customer to comply with its rules and procedures of the Public Service Commission of West Virginia.

Services shall actually be disconnected only after at least twenty-four hours written notice shall be given to the customers by the utility that bills are five or more days delinquent, and in accordance

A service charge equal to the actual bank fee assessed to the Town up to a maximum of \$25 be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

**LEAK ADJUSTMENT**

\$0.67 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's historical average use.

**SECURITY DEPOSIT**

A deposit of \$50 or 1/8 of the average annual usage of the applicant's specific customer class, whichever is greater.

**FIRE SERVICE PROTECTION**

Fire Hydrant Rental- \$300 per hydrant per year  
A complete copy of the tariff is available for inspection at Gilbert Town Hall, Gilbert, West Virginia, located on US Route 52 in Gilbert West Virginia, phone 304-664-9625.  
Dated this 18th day of September 2008.  
Vivian Livingood, Mayor  
Town of Gilbert  
9-23, 30

Any discontinuance of service shall follow the rules and procedures of the Public Service Commission of West Virginia. Service shall actually be disconnected only after at least twenty-four hours written notice shall have been given to the customer by the utility that bills are five or more days delinquent, and in accordance with the rules and procedures of the Public Service Commission of West Virginia.

**RECONNECTION CHARGE**

\$25.00  
To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

with the rules and procedures of the Public Service Commission of West Virginia.

**RECONNECTION CHARGE**

\$25.00  
To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

**TAP FEE**

The following charge is to be made whenever the utility installs a new tap to serve an applicant. A tap fee of \$100 will be charged to all customers who apply for service outside of a certificate proceeding before the Public Service Commission for each new tap to the system.

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

2.7

BOND ORDINANCE

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THE TOWN OF GILBERT

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF GILBERT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); 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; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Bond Legislation. This Ordinance (together with any ordinance or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 19 of the Code of West Virginia, 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 Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Bond Legislation.

“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, collectively, the Series 2009 A Bonds, the Prior Bonds and any Parity Bonds hereafter issued within the terms, restrictions and conditions contained in this Bond Legislation.

“Closing Date” means the date upon which there is an exchange of the Series 2009 A Bonds for all or a portion of the proceeds of the Series 2009 A Bonds.

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

“Consulting Engineers” means E. L. Robinson Engineering Co., Charleston, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 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.

“Depository Bank” means the bank or banks designated as such in the Supplemental Resolution and any successors and assigns, which shall be a member of FDIC.

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

“FDIC” means the Federal Deposit Insurance Corporation by Section 5.01 hereof.

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

“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” means the United States of America, United States Department of Agriculture, Rural Utilities Service, which is expected to be the original purchaser of the Series 2009 A Bonds.

“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.

“Issuer” means The Town of Gilbert, a municipal corporation and political subdivision of the State in Mingo 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.

“Letter of Conditions” means, collectively, the Letter of Conditions from the Government dated April 11, 2007, and all amendments thereto.

“Mayor” means the Mayor of the Issuer.

“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); fees and expenses of fiscal agents, depository banks, registrars, paying agents and trustees (other than those capitalized as part of the Costs); payments to pension or retirement funds; taxes and such

{C1337155.1}

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, notices or other action by a specified percentage of Registered Owners, any such Bond registered to the Issuer.

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

"Project" means the acquisition and construction of certain 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, collectively, the final order or orders of the PSC, granting the Issuer a certificate of convenience and necessity to construct the Project and approving the financing for the Project and the rates of the System.

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

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

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; 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 Code of West Virginia, 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.

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

“Registrar” or “Bond Registrar” means the Issuer, which shall so serve by the Recorder.

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by Section 5.01 hereof.

“Reserve Accounts” means, collectively, the respective Reserve Accounts created for the Series 2009 A Bonds.

“Reserve Requirements” means, collectively, the respective reserve requirements of the Series 2009 A Bonds.

“Revenue Fund” means the Revenue Fund created by Section 5.01 hereof.

“Series 2009 A Bonds” means the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), of the Issuer, authorized to be issued by this Bond Legislation.

“Series 2009 A Bonds Construction Trust Fund” means the Series 2009 A Bonds Construction Trust Fund created by Section 5.01 hereof.

“Series 2009 A Bonds Reserve Account” means the Series 2009 A Bonds Reserve Account created by Section 5.02 hereof.

“Series 2009 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 2009 A Bonds in the then current or any succeeding Fiscal Year.

“Series 2009 A Bonds Sinking Fund” means the Series 2009 A Bonds Sinking Fund created by Section 5.03 A (1) hereof.

“Sinking Funds” means the Sinking Fund created for the Series 2009 A Bonds.

“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 2009 A Bonds; provided that, any matter intended by this Bond Legislation to be included in the Supplemental Resolution with respect to the Series 2009 A Bonds and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by this Bond Legislation to be set aside and held for the payment of or security for the Series 2009 A Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

“System” means the complete existing waterworks system of the Issuer, and shall include the Project and 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 generally 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 2009 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 Registered Owners, 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 of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

A. The Issuer is a municipal corporation and political subdivision of the State in Mingo County of said State. The Issuer presently owns and operates a municipal 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 Government 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 Government.

C. The estimated maximum cost of acquisition and construction of the Project is \$2,889,478, of which \$472,000 will be obtained from proceeds of the Series 2009 A Bonds, \$917,478 will be obtained from a grant from the Government and \$1,500,000 will be obtained from a Small Cities Block Grant.

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 on the Bonds, and to make 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 2009 A Bonds in the aggregate principal amount of not more than \$500,000, 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 on the Series 2009 A Bonds prior to

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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 2009 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, 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 2009 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 2009 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.

There are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

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

G. It is in the best interests of the Issuer that the Series 2009 A Bonds be sold to the Government pursuant to the terms and provisions of the Letter of Conditions.

H. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement, relating to authorization of the acquisition and construction of the Project, the operation of the System and the issuance of the Series 2009 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, the time for rehearing and appeal of which will have expired or will have been waived prior to the issuance of the Series 2009 A Bonds.

## 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 \$3,000,000, in accordance with the plans and specifications prepared by the Consulting Engineers, approved by the Government and the Issuer and heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 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 Government.

## ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2009 A Bonds, funding the Series 2009 A Bonds Reserve Account, 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 2009 A Bonds of the Issuer. The Series 2009 A Bonds shall be issued as a single bond, designated as “Water Revenue Bonds, Series 2009 A (United States Department of Agriculture),” in the aggregate principal amount of not more than \$500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2009 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable monthly 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 Series 2009 A Bonds.

The Series 2009 A Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the Series 2009 A Bond form hereinafter set forth, and shall have such other terms not inconsistent with this Bond Legislation, as shall be set forth in the Supplemental Resolution and such Series 2009 A Bond form.

Section 3.03. Execution of Bonds. The Series 2009 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. Negotiability, Transfer and Registration. The Series 2009 A Bonds shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State , but the Bonds, and the right to principal of and stated interest on the Bonds, may only be transferred by transfer of the registration thereof upon the books of the Bond Registrar, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2009 A Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

No registration of transfer of the Series 2009 A Bonds shall be permitted to be made after the 15<sup>th</sup> day next preceding any installment payment date on the Bonds.

The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, books for the registration and transfer of the Series 2009 A Bonds and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2009 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Government, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2009 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2009 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2009 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue 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 Registered Owner'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 may incur. All Bonds so surrendered shall be canceled 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 3.06. Bonds not to be Indebtedness of the Issuer. The Series 2009 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 Registered Owner of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2009 A Bonds shall be secured by a first lien on the Gross Revenues. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2009 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 3.08. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 A Bonds to the Government as soon as the Government will accept such delivery.

Section 3.09. Form of Bonds. The text of the Series 2009 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:

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE TOWN OF GILBERT  
WATER REVENUE BOND, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$ \_\_\_\_\_

FOR VALUE RECEIVED, on this \_\_\_ day of \_\_\_\_\_, 2009, THE TOWN OF GILBERT, a municipal corporation and political subdivision of the State of West Virginia in Mingo County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.125% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$2,054, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

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

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

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing 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 of the Code of West Virginia, 1931, as amended (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 and from moneys in the Series 2009 A Bonds Reserve Account created under the Bond Legislation for this Bond and unexpended proceeds of this Bond. Such Gross

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Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2009 A Bonds Reserve Account and unexpended proceeds of this Bond. 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 110% of the maximum amount of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds. The Issuer has entered into certain further covenants with the Registered Owners of this Bond, for the terms of which, reference is made to the Bond Legislation. Remedies provided the Registered Owners of this Bond 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 in the Bond Legislation, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

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

The Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into

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consideration prevailing private and cooperative rates and terms in or near its community for loans for such purposes and periods of time.

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, this Bond will be in default should any proceeds of this Bond be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

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

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 and interest on this Bond.

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

IN WITNESS WHEREOF, THE TOWN OF GILBERT 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 as of the date first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder



(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. The Series 2009 A Bonds shall be sold to the Government pursuant to the terms and conditions of the Letter of Conditions. The Letter of Conditions is hereby approved and specifically incorporated into this Bond Legislation.

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) Series 2009 A Bonds Construction Trust Fund.

#### Section 5.02. Establishment of Funds and Accounts with Commission.

The following special account is hereby created with and shall be held by the Commission:

- (1) Series 2009 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, each month, from the moneys in the Revenue Fund commencing on the day which is 30 days following the date of delivery of the Series 2009 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2009 A Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest set forth in the Series 2009 A Bonds.

(2) The Issuer shall next, each month, from the moneys in the Revenue Fund commencing on the day which is 24 months following the date of delivery of the Series 2009 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2009 A Bonds Sinking Fund, the amount of principal set forth in the Series 2009 A Bonds.

The deposits into the Series 2009 A Bonds Sinking Fund provided in this paragraph and in Section 5.03 A(1) above, constitute actual payments of principal of and interest on the Series 2009 A Bonds to the Government.

(3) The Issuer shall next, each month, from the moneys in the Revenue Fund commencing on the day which is 24 months following the date of delivery of the Series 2009 A Bonds and continuing on the corresponding day of each month, remit to the Commission for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 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 2009 A Bonds Reserve Requirement.

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

(5) The Issuer shall next, each month, from the moneys in the Revenue Fund, make the payments into the Renewal and Replacement Fund in an amount equal to 2 ½% of the Gross Revenues each month, exclusive of any payments for account of the 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 the 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 2009 A Bonds Sinking Fund shall be used only for the purpose of paying principal of and interest on the Series 2009 A Bonds as the same shall become due. Moneys in the Series 2009 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 A Bonds as the same shall come due, when moneys in the Series 2009 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2009 A Bonds Reserve Account (if fully funded in an amount equal to the Series 2009 A Bonds Reserve Requirement) shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the

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Series 2009 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2009 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 A Bonds Reserve Account which result in a reduction in the balance of such account to an amount below the Series 2009 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 2009 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.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2009 A Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 A Bonds Reserve Account created hereunder, and all amounts required for such account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Government, the Issuer shall make the necessary arrangements whereby required payments into the Series 2009 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2009 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

The Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds Outstanding under the conditions and restrictions set forth herein.

B. 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

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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.

C. 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 Government, 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.

D. 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.

E. If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided that, all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Section 5.03 A hereof, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority.

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

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

## ARTICLE VI

### APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. All moneys derived from the sale of the Series 2009 A Bonds shall be deposited by the Issuer, as received from time to time, in the Series 2009 A Bonds 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 2009 A Bonds.

Section 6.02. Disbursements from Bond Construction Trust Fund. The Series 2009 A Bonds Construction Trust Fund shall be kept separate and apart from all other funds of the Issuer, and shall be drawn out, used and applied by the Issuer solely for the payment of the costs of the Project and purposes incidental thereto, including payment of any borrowings by the Issuer made for the purpose of temporarily financing a portion of the costs of the Project and payment of interest on the Series 2009 A Bonds prior to and during construction and for a period up to six months after completion of construction and for no other purposes whatsoever. If approved by the Government, the moneys in said fund shall be secured at all times by Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. If for any reason the amounts on deposit in the Series 2009 A Bonds Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Issuer as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Registered Owners of the Series 2009 A Bonds.

Expenditures or disbursements from the Series 2009 A Bonds Construction Trust Fund shall be made only after such expenditures or disbursements have been approved in writing by the Governing Body, the Consulting Engineers and the Government.

The Issuer shall coordinate with the Government on the monthly payment of the costs of the Project and shall submit invoices and requisitions as directed by the Government.

## 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 Registered Owner of the Series 2009 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2009 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 the Series 2009 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 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 Registered Owner of any Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2009 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 on the Series 2009 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 such payments as they become due and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The 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 this Bond Legislation. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Recommended Decision of the Administrative Law Judge entered on August 28, 2008, as made final on September 17, 2008, in case number 08-0786-W-MA.

So long as the Series 2009 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to

take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, 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.

Section 7.05. Sale of the System. So long as the Series 2009 A Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of, or encumbered (other than any statutory mortgage lien created under the Act on account of obligations issued within the restrictions hereof) only with the written consent of the Government and such consent will specify the disposition of any such sale or transfer.

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 2009 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2009 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 2009 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 A Bonds and the interest thereon in this Bond Legislation or upon the System or any part thereof.

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 Government.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 A Bonds.

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

So long as the Series 2009 A Bonds are Outstanding, no Parity Bonds shall be issued at any time, unless 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 for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements 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 foregoing limitation may be waived or modified by the written consent of the Registered Owners of the Series 2009 A Bonds, representing 75% of the then-outstanding principal indebtedness.

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 Registered Owners of the Series 2009 A Bonds and the Registered Owners 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 2009 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 2009 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 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 and the Prior Ordinances.

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 Government and its agents and representatives to inspect all books, documents, papers and records relating to the Project and the System, at all reasonable times, for the purpose of audit and examination. The Issuer shall submit to the Government such documents and information as it may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any State and federal grants or other sources of financing for the Project.

The Issuer shall permit the Government and its 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 Registered Owner of the Series 2009 A 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 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 Government, and shall mail in each year to any Registered Owner of the Series 2009 A Bonds requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations Outstanding.

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 (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto) and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2009 A Bonds, and shall submit said report to the Government. Such audit report shall include a statement that the Issuer is in compliance with the terms and provisions of the Act 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 Letter of Conditions 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 Government and its agents and representatives to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Government and its agents and representatives with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Government with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to issuance of the Series 2009 A Bonds, equitable rates or charges for the use of and service rendered by the System shall 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. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each Fiscal Year equal to at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services of the System described in Section 7.04.

Section 7.10. Operating Budget. 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 Government within 30 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 Government and any Registered Owner of the Series 2009 A Bonds within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Government

and any Registered Owner of the Series 2009 A Bonds or anyone acting for and on behalf of such Registered Owner.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers, certifying that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Government, the Project will be adequate for the purposes for which it was designed, the funding plan as submitted to the Government 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 Government, 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.

The Issuer shall employ qualified operating personnel, properly certified by the State to operate the System so long as the Series 2009 A Bonds are Outstanding.

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 20 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 hereby covenants and agrees that so long as the Series 2009 A Bonds remain Outstanding, the Issuer shall, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

(B) Public Liability Insurance, with limits of not less than \$1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 from claims for damage to property of others which may arise from the operation of the System.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated for the benefit of the Issuer, with limits of not less than \$1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 from claims for damage to property of others which may arise from such operation of vehicles.

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

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

(F) Flood Insurance will be obtained by the Issuer if available; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

(G) Construction Bonds. 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. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance 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 and Operation of Project; Permits and Orders. The Issuer shall 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 federal and State requirements and standards.

The Issuer has obtained all permits required by State and federal laws necessary for the acquisition and construction of the Project, all requisite orders and approvals from the PSC and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2009 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance With Letter of Conditions and Law. The Issuer shall comply with, perform and satisfy all terms and conditions of the Letter of Conditions, this Bond Legislation and the Act. The Issuer shall comply with all applicable laws, rules and regulations issued by the Government or other State, federal or local bodies in regard to the acquisition and construction of the Project and operation, maintenance and use of the System.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Registered Owner of the Series 2009 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Series 2009 A Bonds.

Section 7.20. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2009 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

## 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 written 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, or at par if such investment is held in the "Consolidated Fund". 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 retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 A Bonds are outstanding.

Notwithstanding the foregoing, any investments made pursuant to this Bond Legislation shall comply with the guidelines of the Government.

## 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 2009 A Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2009 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 2009 A Bonds set forth in this Bond Legislation, any supplemental resolution, or in the Series 2009 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 Government or a Registered Owner of the Series 2009 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, any Registered Owner of the Series 2009 A Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding, enforce all rights of such Registered Owners, including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2009 A Bonds, (iv) by action at law or bill in equity, require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2009 A Bonds, and (v) by action or bill in equity, enjoin any acts in violation of the Bond Legislation with respect to the Series 2009 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2009 A Bonds shall be on a parity with the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2009 A Bonds 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 Registered Owner 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 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 the System, 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 the System as the Issuer itself might do.

Whenever all that is due upon the 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 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 Registered Owners, and the curing and making good of any default under the provisions of the Bond Legislation, and the title to and ownership of the 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 to the Registered Owners of the Series 2009 A Bonds, the principal of and interest 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 Registered Owners shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through direct payment of the entire outstanding principal of and all accrued interest on the Series 2009 A Bonds to the Registered Owners thereof, the Issuer may not defease the Series 2009 A Bonds or provide for payment thereof by escrow or other similar arrangements.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Modification or Amendment. Prior to the issuance of the Series 2009 A Bonds, this Bond Legislation may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 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 Registered Owners of the Series 2009 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds then Outstanding; provided that, no change shall be made in the maturity of the Series 2009 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the 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 2009 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 2009 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 2009 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 2 successive weeks, with at least 6 full days intervening between each publication, in Williamson Daily News, one qualified newspaper of general circulation in the Issuer, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Series 2009 A Bonds, and that any person interested may appear before the Issuer upon a certain date, not less than 10 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: July 6, 2009

Second Reading: July 13, 2009

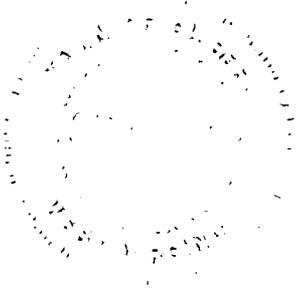
Public Hearing  
and Third Reading: July 30, 2009

  
Mayor

CERTIFICATION

Certified a true copy of a Bond Ordinance duly passed by the Council of  
THE TOWN OF GILBERT on July 13, 2009, and effective on July 30, 2009.

Dated this 3<sup>rd</sup> day of August, 2009.



[SEAL]

*Mindy T. [Signature]*  
\_\_\_\_\_  
Recorder

## EXHIBIT A

### PROJECT DESCRIPTION

The Project consists of construction of additions and improvements necessary to upgrade and expand service to approximately 172 customers in the Slabtown, Tamcliff and Paynter Bottom areas along Routes 80 and 80/1 north of the Town of Gilbert, together with all related appurtenances.

EXHIBIT B

THE TOWN OF GILBERT

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on \_\_\_\_\_, 2009, the Council of The Town of Gilbert (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain 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 \$\_\_\_\_\_ in aggregate principal amount of Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable monthly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a revenue fund and the disposition of the revenues of the System; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds; directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. 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 registered owners of the Bonds to the Gross Revenues of the System; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the registered owners of the Bonds.

6. Established the events of default and the remedies of the registered owners of the Bonds; 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 Town of Gilbert at a regular meeting on \_\_\_\_\_, 2009, at \_\_\_p.m., in the Council Chambers, Town Hall, Gilbert, 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 Town Hall.

---

Recorder

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

2.8

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE TOWN OF GILBERT WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the “Governing Body”) of The Town of Gilbert (the “Issuer”) has duly and officially passed a Bond Ordinance on July 13, 2009, effective July 30, 2009 (the “Bond Ordinance”), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF GILBERT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); 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; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING 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 2009 A (United States Department of Agriculture), of the Issuer, in an aggregate principal amount not to exceed \$500,000 (the "Bonds"), all in accordance with Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (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 Bonds are proposed to be purchased by the Government pursuant to the Letter of Conditions; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, 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 TOWN OF GILBERT, 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 Williamson Daily News, one 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, Town Hall, Gilbert, West Virginia, on July 30, 2009, at 10:00 a.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 2009 A (United States Department of Agriculture), of the Issuer, in the original principal amount of \$472,000. The Bonds shall be issued in the form of one Bond, shall be dated the date of delivery, shall mature forty years from the date thereof, shall be numbered AR-1, and the principal amount advanced under the Bonds shall bear interest at the rate of 4.125% per annum. Monthly installments of interest only on the amounts advanced under the Bonds are payable 30 days following the date of delivery of the Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Bonds, and thereafter, monthly installments of principal of and interest on the Bonds, in the aggregate amount of \$2,054, are payable on the corresponding day of each month, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof. The Bonds are subject to prepayment as set forth in the Bond Ordinance and the Bonds. All principal and interest payments on the Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

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 approves and accepts the offer of the Government to purchase the Bonds. The execution and delivery of the Bonds by the Mayor and the Recorder and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, 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 Branch Banking and Trust, Gilbert, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 6. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2009 A Bonds Construction Trust Fund, as

received by the Issuer for payment of costs of the Project, including costs of issuance of the Bonds.

Section 7. 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 Government pursuant to the Letter of Conditions on or about August 3, 2009.

Section 8. The acquisition and construction of the Project and the financing thereof 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 9. 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 2009 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 10. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 11. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 12. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 30<sup>th</sup> day of July, 2009.

  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of THE TOWN OF GILBERT on the 30<sup>th</sup> day of July, 2009.

Dated this 3<sup>rd</sup> day of August, 2009.

[SEAL]



*Michelle [Signature]*  
\_\_\_\_\_  
Recorder



**TOWN OF GILBERT  
PO BOX 188  
GILBERT, WV 25621**

**SPECIAL COUNCIL MEETING FOR THE MEETING  
OF JULY 06, 2009**

**MAYOR:** Vivian Livingood  
**Recorder:** Michael Fox

**Council Members:**  
Randy Livingood  
Penny Sammons  
Sharon Murphy  
Todd Westfall  
Chris Turner

The Gilbert Town Council held a special council meeting on July 06, 2009 at 6:30. In attendance was the following: Mayor Vivian Livingood, Council members Randy Livingood, Penny Sammons, Todd Westfall, and Chris Turner. Also present was the following: Town Secretary Vivian Carter, Attorneys Samme Gee, Glen Rutledge and Ryan White, EL Robinson representative Rick Roberts and Williamson Daily News representative Jeffrey Reynolds and his wife.

Prayer was led by Rev. Chris Turner. And the Pledge to the flag was led by Councilman Todd Westfall.

At a properly called meeting, the Town of Gilbert adopted and executed the following forms, and these minutes showing the adoption will be provided to USDA-Rural Development:

RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"  
Form 1940-1 - "Request for Obligation of Funds"  
Form RD 1942-46 - "Letter of Intent to Meet Conditions"

A motion was made by Penny Sammons and seconded by Todd Westfall to have Mayor Livingood to sign this paperwork which will allow additional grant monies for the Slabtown water project. Motion carried.

Ryan White then addressed the council with the first reading of the Town of Gilbert Water Revenue Bonds Ordinance for the Slabtown, Tamcliff, Paynter Bottom water project. Ryan went thru the ordinance and explained each line item and answered all questions for the council and our attorney Mr. Rutledge. Mr. White stated that this was only the first reading and that we will

be having two additional meetings for passage. The next meeting will be at our regular meeting on the 13<sup>th</sup> of July and the final and public hearing will be on the 30<sup>th</sup> of July at 10:00 am. Council Randy Livingood then made the motion to accept the first reading of the ordinance with Penny Sammons seconding the motion. Motion carried.

Rick Roberts of EL Robinson then addressed the council and asked them to accept the following contractors to start work on the Slabtown water project. The lowest bid on project #1 was McCoy Engineering of Salt Rock for the amount of \$2,136,000. and the lowest bid on project #2 was Mid Atlantic of Ohio for the amount of 176,869,000. Council Todd Westfall made the motion to award McCoy Engineering project #1 and Mid Atlantic project #2. Council Chris Turner seconded the motion. Motion carried.

Having no further business, Penny Sammons made the motion to close the meeting with a second from Todd Westfall. Motion carried at 6:55 p.m.

# **THE TOWN OF GILBERT**

**PO Box 188**

**Gilbert, WV 25621**



## ***Council Meeting of July 13, 2009***

*The Gilbert Town Council held its regular council meeting on Monday, July 13, 2009 at 6:30 with the following person present: Mayor Vivian Livingood, Recorder Michael Fox, council members: Randy Livingood, Penny Sammons, Sharon Murphy and Todd Westfall. Also present was Town Attorney Glen Rutledge, Town Secretary Vivian Carter, Attorney Ryan White, EL Robinson Rick Roberts, Veolia representative Mike Preston, Water Supt. James Deel, Williamson Daily reporter Jeffrey Reynolds, fire member Rick Toler and former town recorder David Fox.*

*Prayer was led by Town Attorney Glen Rutledge.*

*Pledge was led by Councilman Todd Westfall.*

*Mayor Livingood asked for a motion for the minutes of the previous meetings. Penny Sammons made that motion with Sharon Murphy seconding the motion. Motion carried.*

*Mayor Livingood then asked for a motion on the financial statement which Sharon Murphy made the motion to accept the financial statements with Penny Sammons seconding the motion. Motion carried.*

### **SLABTOWN WATER PROJECT**

*Ryan White, attorney for the Slabtown water project, first addressed the council concerning the second reading of the Slabtown Water Ordinance. Mr. White read the ordinance by title and answered all questions concerning the ordinance. Mr. Michael Fox made the motion to accept the second reading of the ordinance with Todd Westfall seconded the motion. Motion carried. Mr. White then asked council to approve the recent publication in the Williamson Daily News concerning the Water Ordinance. Michael Fox made the motion to approve the publication with Sharon Murphy seconding the motion. Motion carried. Michael Fox then made the motion to have the third and final hearing on July 20, 2009 at 10:00 at town hall. Penny Sammons seconded the motion. Motion carried.*

*Rick Roberts, of EL Robinson, then addressed the council about having the council to allow the Mayor to sign all the necessary paperwork on the Slabtown project. This paperwork is the "Notice of Award" for contract #1 to McCoy and contract #2 to Mid-Atlantic. Michael Fox made the motion to have Mayor Livingood to sign all necessary paperwork for the award contracts. Penny Sammons seconded the motion. Motion carried.*

*Rick Roberts then gave the council an update on the Horsepen project. He further stated that we would need to start on the user agreements in the very near future.*

*Rick Roberts along with Mayor Livingood gave the council on the recent meeting with the DEP on the wastewater plant.*

### **WATER DEPT.**

*James Deel then gave his monthly report to the council. James along with Mayor Livingood informed the council on the meeting with the Dept. of Health representative JD Douglas. These meeting will enhance the production part of the water plant. Mr. Douglas has the Mayor and James Deel to do an implementation plan. They are as follows: (1) to establish performance goals for our plant and to learn and utilize priority- setting and problem-solving skills to achieve the goals, (2) meet with facilitator to work on Jar Test setting sand possible implementation of permanent testing, (3) develop a sampling, testing, and data development guideline specific to our utility that will allow assessment of our unit processes relative to optimized performance, (4) develop plant data for the most recent 12-month period using the OAS. And (5) begin using OAS and continuing through duration of the Performance Based Training and beyond. Data will be assessed for areas to improve performance. A motion was made by Michael Fox and seconded Todd Westfall to accept the Performance Basic Training classes. Motion carried.*

*James gave a report on the pumps at the water plant. At this time Mr. Deel expressed concern over the backwash pump.*

*James Deel expressed a desire to the council to purchase 3 more shelves so that he will be able to store his equipment neatly. Also Mr. Deel requested to purchase parts and meters at the approximate cost of \$400.00. Penny Sammons made the motion to allow Mr. Deel to purchase the supplies and the shelves with Michael Fox seconding the motion. Motion carried.*

*Water loss for the water plant this month was 14%. Todd Westfall made the motion to have the necessary work done on the pumps and to be repaired if possible and if not be replaced. Penny Sammons seconded the motion. Motion carried.*

### **POLICE DEPT.**

*Since Chief Endicott was at National Guard training council received his report by way Mayor Livingood. Council was presented a statement from Chief Endicott on what the activity for the police dept. was for the previous month. With the paperwork Chief Endicott requested that we begin the physical for JL Hatfield to be able to go to the academy since his 90 days of employment is up. Todd Westfall made the motion to have Mr. Hatfield to go for his physical with Penny Sammons seconding the motion. Motion carried.*

*Mayor Livingood the informed council about the conversation she had with Mayor Sheila Kessler about Jeremy Hill. According to Matewan Mayor S. Kessler they were not planning a sending Mr. Hill to the academy due to financial reasons even though they had scheduled him to go. Mr. Hill went to test for the academy but was unable to pass the agility test because he had been unable to train for it due to the recent National Guard call up. Mr. Hill is scheduled to go at the next session to try again to pass the agility test. However, this does present a new problem since Randy Toler is also scheduled to take the agility test. . After a brief discussion, Michael Fox made the motion to have the Mayor to write a hardship case to the academy stating that we are unable to send two cops to the academy at the same time due to financial reasons. Penny Sammons seconded the motion. Motion carried.*

### **STREET DEPT.**

*Mayor Livingood then asked council to consider getting another vehicle for the street dept. She then asked council to approve a weed eater for the town. Penny Sammons made the motion to purchase a weed eater with Michael Fox seconding the motion. Motion carried.*

### **WASTEWATER**

*Mike Preston, of Veolia, then gave the council an update on the wastewater plant and the pumps which need to be replaced due to the recent flooding. He further informed council of the recent meeting he had with FEMA representative Rick Turley along with John Stallard.*

### **FIRE DEPT.**

*The fire dept. was then discussed. Mayor Livingood informed everyone that truck #35 had lost its engine on a recent fire call. The cost to replace this will be \$5384.00 with no cost to the labor. According to Mayor Livingood, ex-fire chief Jerry Grimmatt and Tommy Fortner will install the engine at no cost. Penny Sammons made the motion to purchase the engine with Todd Westfall seconding the motion. Motion carried.*

*Fire dept member James "Goober" Maynard had sent a request of 12 face helmet shields at the cost of \$35.00, and stream light box at the cost of \$122.00. Penny Sammons made the motion to purchase the necessary items for the fire dept. with Sharon Murphy seconding the motion. Motion carried.*

*Rick Toler, member of the Gilbert Vol. Fire Dept., explained to council the need for air packs and stated that the ones which are at the fire house are outdated. He asked council to please look into purchasing or getting grants for air packs.*

*Council then discussed the fact that Stafford EMS does reside at the GVFD building. Council asked how much of the fire dept. building was actually used by Stafford and it was explained that they do use over half of the building and that they use the front rooms for their billing. Mayor Livingood stated that we charge one person \$700.00 per month for one of the larger rooms. They did discuss that Stafford does not assist on the utilities but do pay all the heating for the bay area. When asked how much does that cost each month no one was able to answer that since the diesel is stored in one container with the ambulances also filling up out of the same container. Mayor Livingood stated that to rectify that problem we could easily have another tank installed so that it would be used to heat the bay and therefore, we could get a cost of heating this area. Council decided that we would have Attorney Glen Rutledge to fix up a renter agreement between the town/fire dept. and Stafford EMS for \$1500.00 per month and ½ of the utilities. Penny Sammons made the motion to have Stafford EMS \$1500.00 per month and ½ of the utilities. Seconded by Sharon Murphy. Motion carried.*

#### **WATER & WASTEWATER**

*This was tabled until next meeting*

#### **TOWN STATIONARY**

*Mayor Livingood asked council to approve her ordering letterhead for the town. She further asked council to allow Johnson Printing to do the mass mailings “thank you” letters for the person and/or organizations which helped us during the time of the flood. The cost is a small fee which will also include the postage. Motion was made by Michael Fox and seconded by Penny Sammons to allow this mailing service. Motion carried.*

#### **EXOTIC DANCING ORDINANCE**

*A motion was made by Michael Fox and seconded by Penny Sammons on the Exotic Dancing ordinance. Seconded reading will be at the special council meeting of July 30, 2009 and the third and final reading will be on August 10, 2009. Motion carried.*

#### **BEER LICENSE ORDINANCE**

*This was tabled until a later time*

#### **B & O ORDINANCE**

*This was tabled until a later time*

*Mayor Livingood the announced to everyone that Mike Whitt, of the Redevelopment Authority will be here on Tuesday, July 21, 2009 at 6:30 for a meeting concerning the upcoming coal projects. Each and every person is invited to attend.*

*A motion was made by Michael Fox to go into executive session at 9:00 with Penny Sammons seconding the motion. Motion carried*

*A motion was made by Randy Livingood to reconvened at 9:45 and to close the meeting. Sharon Murphy seconded. Motion carried.*

TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

MINUTES ON ENACTMENT OF BOND ORDINANCE  
AND ADOPTION OF SUPPLEMENTAL RESOLUTION

The undersigned Recorder of the Town of Gilbert (the "Issuer") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the Council of the Issuer:

\* \* \*

\* \* \*

\* \* \*

The Council of the Issuer met in regular session, pursuant to notice duly given, on the 30<sup>th</sup> day of August, 2009, in Gilbert, West Virginia, at the hour of 10:00 a.m.

- |          |                     |   |               |
|----------|---------------------|---|---------------|
| PRESENT: | Vivian Livingood    | - | Mayor         |
|          | Brian Todd Westfall | - | Councilmember |
|          | Patricia Sammons    | - | Councilmember |
|          | Randy Livingood     | - | Councilmember |
|          | Marvin Chris Turner | - | Councilmember |
|          |                     |   |               |
| ABSENT:  | Michael Fox         | - | Recorder      |
|          | Sharon Murphy       | - | Councilmember |

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

There being no protests or suggestions made as to said Bond Ordinance, the Mayor thereupon stated that it would be in order to consider the said

Bond Ordinance for final enactment and the Mayor caused the said Bond Ordinance to be read as follows:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF GILBERT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); 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; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said Bond Ordinance be finally enacted and put in full force and effect on and from the date hereof.

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

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE TOWN OF GILBERT WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

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

RESOLUTION OF THE GOVERNING COUNCIL OF THE  
TOWN OF GILBERT APPROVING INVOICES  
RELATING TO CONSTRUCTION AND OTHER COSTS  
FOR THE IMPROVEMENTS TO THE TOWN'S EXISTING  
WATER SYSTEM IN MINGO COUNTY, WEST  
VIRGINIA.

and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said Resolution be adopted and be in full force and effect on and from the date hereof.

\* \* \*

\* \* \*

\* \* \*

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

  
Mayor

\* \* \*

\* \* \*

\* \* \*

CERTIFICATE

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

WITNESS my signature on this 30<sup>th</sup> of August, 2009.

  
\_\_\_\_\_  
Recorder

State of West Virginia, Mingo County, to-wit:

I, Gaither Perry, Publisher of Williamson Daily News, a paper published in the County aforesaid, do affirm that

Notice hereto attached was published in said paper for 2 successive weeks, the first publication thereof being on the 15th day of July, 2009 and the subsequent publication on the 22nd day of July, 2009, the day of day of 2009, and the day of day of 2009.

[Signature]

State of West Virginia, Mingo, to-wit:

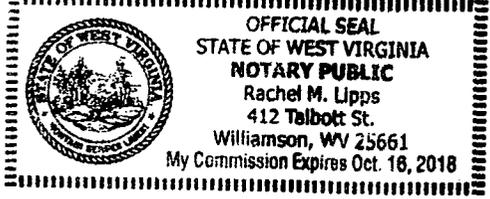
being duly sworn, says that he posted a copy of the annexed at the front door of the Court House of said County, on the day of 2009.

Taken, subscribed and sworn to before me, this 28th day of July 2009. Printer's fee \$ 74.00

[Signature: Rachel M. Lipps]

Notary Public

MY COMMISSION EXPIRES ON Oct 16, 2018



THE TOWN OF GILBERT NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on July 13, 2009, the Council of The Town of Gilbert (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain 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 \$500,000 in aggregate principal amount of Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates not exceeding the then legal maximum rate, payable monthly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a revenue fund and the disposition of the revenues of the System; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds; directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. 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 registered owners of the Bonds to the Gross Revenues of the System; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the registered owners of the Bonds.

6. Established the events of default and the remedies of the registered owners of the Bonds; 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 Town of Gilbert at a regular meet-

ing on July 30, 2009, at 10:00 a.m. in the Council Chambers, Town Hall, Gilbert, 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 Town Hall.

Michael F. Recorder 7:15,2

NUMBER  
AR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE TOWN OF GILBERT  
WATER REVENUE BOND, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$472,000

FOR VALUE RECEIVED, on this 3<sup>rd</sup> day of August, 2009, THE TOWN OF GILBERT, a municipal corporation and political subdivision of the State of West Virginia in Mingo County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of FOUR HUNDRED SEVENTY-TWO THOUSAND DOLLARS (\$472,000), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.125% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$2,054, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

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

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

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing 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 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on July 14, 2009, effective July 30, 2009, and a Supplemental Resolution duly adopted by the Issuer on July 20, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from moneys in the Series 2009 A Bonds Reserve Account created under the Bond Legislation for this Bond and unexpended proceeds of this Bond. Such Gross

Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2009 A Bonds Reserve Account and unexpended proceeds of this Bond. 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 110% of the maximum amount of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds. The Issuer has entered into certain further covenants with the Registered Owners of this Bond, for the terms of which, reference is made to the Bond Legislation. Remedies provided the Registered Owners of this Bond 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 in the Bond Legislation, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

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

The Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into

consideration prevailing private and cooperative rates and terms in or near its community for loans for such purposes and periods of time.

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, this Bond will be in default should any proceeds of this Bond be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

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

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 and interest on this Bond.

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

IN WITNESS WHEREOF, THE TOWN OF GILBERT 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 as of the date first written above.

[SEAL]

*[Handwritten Signature]*  
Mayor

ATTEST:

*[Handwritten Signature]*  
Recorder

EXHIBIT A

RECORD OF ADVANCES

SPECIMEN

| <u>Amount</u>    | <u>Date</u>    | <u>Amount</u> | <u>Date</u> |
|------------------|----------------|---------------|-------------|
| (1) \$ 35,284.67 | August 3, 2009 | (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 \$ \_\_\_\_\_

(Form of)  
ASSIGNMENT

SPECIMEN

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:

\_\_\_\_\_

BOND REGISTER

2.13

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

| <u>Bond Number</u> | <u>Principal Amount</u> | <u>Date of Bond</u> |
|--------------------|-------------------------|---------------------|
| No. AR-1           | \$472,000               | August 3, 2009      |

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America  
National Finance Office  
1520 Market Street  
St. Louis, Missouri 63103

Signature of Registrar:

The Town of Gilbert

  
Recorder

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.1

GENERAL CERTIFICATE ON:

1. TERMS AND AWARD OF BONDS
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. SPECIMEN BOND
11. BOND PROCEEDS; GRANTS
12. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
13. LAND AND RIGHTS-OF-WAY
14. PUBLIC SERVICE COMMISSION ORDER
15. CONFLICTS OF INTEREST
16. USERS
17. PROCUREMENT OF ENGINEERING SERVICES
18. WETLANDS COVENANT
19. COUNTERPARTS

On this 3<sup>rd</sup> day of August, 2009, we, the undersigned MAYOR and the undersigned RECORDER of The Town of Gilbert in Mingo County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with The Town of Gilbert Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated the date hereof (the "Bonds" or the "Series 2009 A Bonds"), as follows:

1. **TERMS AND AWARD OF BONDS:** The entire issue of the Bonds has been duly awarded to the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), pursuant to a Letter of Conditions dated April 11, 2007, and all amendments thereto (collectively, the "Letter of Conditions"), the Bond Ordinance duly passed by the Issuer on July 14, 2009, effective July 30, 2009, the Supplemental Resolution duly adopted by the Issuer on July 30, 2009 (collectively, the "Ordinance"). All capitalized words and terms used in this Certificate

and not otherwise defined herein shall have the same meanings as set forth in the Ordinance.

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, 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 authorization, 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, licenses, orders and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval and acceptance of the Letter of Conditions by the Issuer. The Issuer has met all conditions set forth in the Letter of Conditions and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

There are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets 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 Mayor did deliver the Bonds to a representative of the Government as the original purchaser of the Bonds.

6. **RATES:** The PSC has duly approved the rates for the Issuer in a Recommended Decision of the Administrative Law Judge dated August 28, 2008, as made final by the PSC on September 17, 2008, in case number 08-0786-W-MA, 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. Such rates are in full force and effect.

7. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "The Town of Gilbert." The Issuer is a municipal corporation and political subdivision of the State of West Virginia in Mingo 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          | Vivian Livingood    | July 1, 2009                          | June 30, 2013                        |
| Recorder       | Michael Fox         | July 1, 2009                          | June 30, 2013                        |
| Council Member | Sharon Murphy       | July 1, 2009                          | June 30, 2013                        |
| Council Member | Brian Todd Westfall | July 1, 2009                          | June 30, 2013                        |
| Council Member | Patricia Sammons    | July 1, 2009                          | June 30, 2013                        |
| Council Member | Randy Livingood     | July 1, 2009                          | June 30, 2013                        |
| Council Member | Marvin Chris Turner | July 1, 2009                          | June 30, 2013                        |

The duly appointed and acting Attorney for the Issuer is Jim Walker, Esquire, Logan, 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, the acquisition, construction and financing of the Project and the operation of 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 Code of West Virginia, 1931, as amended, and the rules of procedure of the Council, 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 Letter of Conditions. All insurance for the System required by the Ordinance and the Letter of Conditions are in full force and effect.

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

11. **BOND PROCEEDS; GRANTS:** On the date hereof, the Issuer received the sum of \$35,284.67 from the Government, being a portion of the principal amount 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. As of the date hereof, the grant from the Government in the amount of \$328,000, the Small Cities Block Grant in the amount of \$1,500,000 are committed for the Project and in full force and effect.

12. **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 Williamson Daily News, 1 qualified newspaper of general circulation in the Issuer, 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 August 30, 2009, at 10:00 a.m., prevailing time, in the Council chambers of the Town Hall in Gilbert, 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.

13. **LAND AND RIGHTS-OF-WAY:** All land, 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.

14. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the Recommended Decision of the Administrative Law Judge entered on November 7, 2008, as made final by the PSC on November 27, 2008, in Case No. 08-0411-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 orders has not expired prior to the date hereof. However, the Issuer hereby states that it will not appeal such orders and the other parties thereto have stated that they do not intend to appeal such orders. Such orders remain in full force and effect.

15. **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.

16. **USERS:** The Issuer will serve at least 448 bona fide users upon the completion of the Project, in full compliance with the Letter of Conditions.

17. **PROCUREMENT OF ENGINEERING SERVICES:** The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. **WETLANDS COVENANT:** The Issuer hereby certifies that it will not use any proceeds of the Bonds for a purpose that will contribute to excessive erosion

of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity.

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 TOWN OF GILBERT, as of the date first written above.

[SEAL]



| <u>Signature</u>          | <u>Official Title</u> |
|---------------------------|-----------------------|
| <u><i>Alan Luning</i></u> | Mayor                 |
| <u><i>[Signature]</i></u> | Recorder              |
| <u>_____</u>              | Attorney              |

WITNESS our signatures and the official corporate seal of THE TOWN OF GILBERT, as of the date first written above.

[SEAL]

Signature

Official Title

\_\_\_\_\_

Mayor

\_\_\_\_\_

Recorder

A handwritten signature in black ink, appearing to read "Jim A. Wall". The signature is written over a horizontal line.

Attorney

EXHIBIT A

See Specimen Bond (Tab No. 15)

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

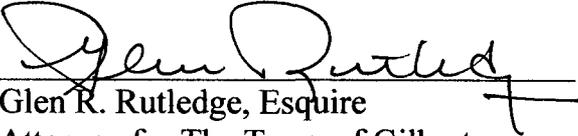
3.2

CERTIFICATE OF NO LITIGATION

On this 3<sup>rd</sup> day of August, 2009, undersigned hereby certifies that as of the date hereof, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale or delivery of the above-captioned Bonds (“the Bonds”), the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds or any proceedings of The Town of Gilbert (the “Issuer”) taken with respect to the authorization, issuance, sale or delivery of the Bonds, the pledge or application of the Gross Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of the Gross Revenues for payment of the Bonds.

All capitalized terms used herein shall have the same meaning set forth in the Bond Ordinance, authorizing the Bonds, duly passed by the Issuer on July 13, 2009, effective July 30, 2009.

WITNESS my signature on this 3<sup>rd</sup> day of August, 2009.

  
Glen R. Rutledge, Esquire  
Attorney for The Town of Gilbert

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.3

CERTIFICATE OF RECORDER AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

On this 3<sup>rd</sup> day of August, 2009, the undersigned duly elected Recorder of The Town of Gilbert (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of The Town of Gilbert Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) 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. USDA Letter of Conditions, Closing Letter and Loan Resolution.
6. Minutes of Council Meeting regarding Adoption of USDA Loan Resolution.
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. Environmental Health Services Permit and NPDES Permit.
15. Insurance Certificates.
16. USDA Grant Agreement.
17. Small Cities Block Grant Letter.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

*Michelle Tuf*  
Recorder

[SEAL]

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.4

CERTIFICATE OF CONSULTING ENGINEER

On this 3<sup>rd</sup> day of August, 2009, I, Charles R. Roberts, Jr., Registered Professional Engineer, West Virginia License No.10424 of E. L. Robinson Engineering Co., Charleston, West Virginia, hereby certify as follows:

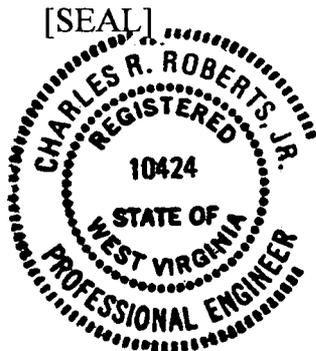
1. My firm is engineer for the acquisition and construction of certain, additions, betterments and improvements (the "Project") to the existing waterworks system (the "System") of The Town of Gilbert (the "Issuer"), to be constructed primarily in Mingo County, West Virginia, which acquisition and construction are being permanently financed in part by 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 July 13, 2009, effective July 30, 2009 (the "Ordinance"), and the Letter of Conditions dated April 11, 2007, and all amendments thereto (collectively, the "Letter of Conditions"), from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government").

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 costs of issuance and related costs.

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 the West Virginia Bureau for Public Health (the "BPH"), and any change orders approved by the Issuer, the Government and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 40 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 Letter of Conditions, and in reliance upon the opinion of Jim Walker, Esquire, of even date herewith, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders

and such bonds have been 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 Government 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) in reliance upon the certificate of Jeffrey Vallet, CPA, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Ordinance; and (x) 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, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Government.

WITNESS my signature and seal as of the date first written above.



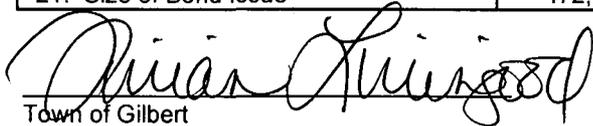
E. L. ROBINSON ENGINEERING CO.

  
Charles R. Roberts, Jr., P.E.  
West Virginia License No. 10424

**SCHEDULE B**

TOWN OF GILBERT - SLABTOWN WATER PROJECT

| A. COST OF PROJECT               | TOTAL        | ARC (SCBG)   | RUS GRANT  | RUS LOAN   |
|----------------------------------|--------------|--------------|------------|------------|
| 1. Construction                  |              |              |            |            |
| Contract 1                       | 2,131,736.00 | 1,150,500.00 | 674,236.00 | 307,000.00 |
| Contract 2                       | 176,869.00   |              | 86,869.00  | 90,000.00  |
| 2. Technical Services            |              |              |            |            |
| Basic                            | 165,000.00   | 165,000.00   |            |            |
| Inspection                       | 97,000.00    | 97,000.00    |            |            |
| Special Services                 |              |              |            |            |
| 3. Legal                         | 20,000.00    |              |            | 20,000.00  |
| 4. Accounting                    | 2,500.00     |              |            | 2,500.00   |
| 5. Administration                | 50,000.00    | 50,000.00    |            |            |
| 5. Lands and Rights of Way       | 7,500.00     |              |            | 7,500.00   |
| 6. Bond Counsel                  |              |              |            |            |
| 7. Interest                      | 30,000.00    |              |            | 30,000.00  |
| 8. Permits                       | 37,500.00    | 37,500.00    |            |            |
| 9. Construction Contingency      | 132,273.00   |              | 132,273.00 |            |
| 10. Project Contingency          | 24,100.00    |              | 24,100.00  |            |
| 11. TOTAL LINES 1 THROUGH 10     | 2,874,478.00 | 1,500,000.00 | 917,478.00 | 457,000.00 |
| B. SOURCES OF FUNDS              |              |              |            |            |
| 12. Federal Grants - ARC         | 1,500,000.00 | 1,500,000.00 |            |            |
| 13. State Grants - RUS           | 917,478.00   |              | 917,478.00 |            |
| 14. Other Grants                 |              |              |            |            |
| 15. Any Other Source - RUS Loan  | 457,000.00   |              |            | 457,000.00 |
| 16. TOTAL LINES 12 THROUGH 15    | 2,874,478.00 | 1,500,000.00 | 917,478.00 | 457,000.00 |
| 17. Net Proceeds from Bond Issue | 457,000.00   |              |            | 457,000.00 |
| C. COST OF FINANCING             |              |              |            |            |
| 18. Funded Reserve               |              |              |            |            |
| 19. Other Costs                  |              |              |            |            |
| Bond Counsel                     | 15,000.00    |              |            | 15,000.00  |
| 20. Total Cost of Financing      | 15,000.00    |              |            | 15,000.00  |
| 21. Size of Bond Issue           | 472,000.00   |              |            | 472,000.00 |

  
 \_\_\_\_\_  
 Town of Gilbert

August 3, 2009  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 E.L. Robinson Engineers

August 3, 2009  
 \_\_\_\_\_  
 Date

*VALLET TAX & ACCOUNTING SERVICE, AC*

*401 Cole Street/P. O. Box 927*

*Logan, WV 25601*

*04) 752-1272/(304) 752-3254 (Fax)*

*601 F. Street*

*South Charleston, WV 25303*

*(304) 768-6730/(304) 768-6031 (Fax)*

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*C. Jeffrey Vallet, CPA*

July 27, 2009

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CPA CERTIFICATE

Town of Gilbert  
Gilbert, WV

United States Department of Agriculture  
Cross Lanes, WV

I have reviewed the water rates of The Town of Gilbert, West Virginia (the "Issuer"), set by the Public Service Commission of West Virginia in a Recommended Decisions by the Administrative Law Judge dated September 17, 2008, as made a final order by the Public Service Commission of West Virginia on September 17, 2008, and adopted by the Issuer on September 18, 2008, the projected operating expenses and the anticipated customer usage provided by the Issuer and E. L. Robinson Engineering Co. It is my opinion that such rates are sufficient (i) to provide for all operating expenses of the waterworks system of the Issuer (the "System"), 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 on the Issuer's Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) (the "Series 2009 A Bonds"), issued on the date hereof, of the Issuer as set forth in the ordinance authorizing the Series 2009 A Bonds.

It is further my opinion that the Net Revenues of the System for the fiscal year following the year in which the Series 2009 A Bonds are issued, will not be less than 120% of the average annual debt service requirements on the Series 2009 A Bonds.

Very truly yours,

  
C. Jeffrey Vallet, CPA

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.6

RECEIPT FOR BONDS

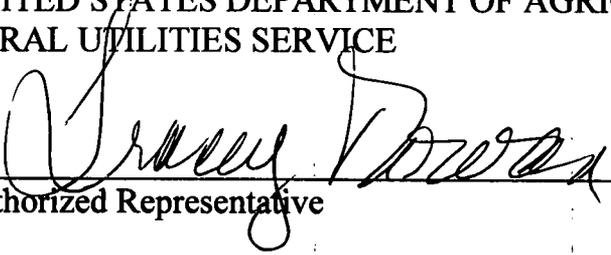
On this 3<sup>rd</sup> day of August, 2009, the undersigned authorized representative of the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), for and on behalf of the Government, hereby certifies as follows:

1. On the date hereof, the undersigned received for and on behalf of the Government, the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) (the "Bonds"), of The Town of Gilbert (the "Issuer"), dated August 3, 2009, issued in the form of one bond in the principal amount of \$472,000, and numbered AR-1. The Bonds bear interest at the rate of 4.125% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of the Bonds and continuing on the corresponding day of each month for the first 24 months after the date of the Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on the Bonds in the aggregate amount of \$2,054, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof. The Bonds represent the entire principal amount of the above-captioned bond issue.

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 as of the date first written above.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
RURAL UTILITIES SERVICE

  
\_\_\_\_\_  
Authorized Representative

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.7

RECEIPT FOR BOND PROCEEDS

On this 3<sup>rd</sup> day of August, 2009, the undersigned Mayor of The Town of Gilbert (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), the sum of \$35,284.67, being the first advance on The Town of Gilbert Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated the date hereof (the "Bonds"). The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer by the Government from time to time as construction progresses.

WITNESS my signature as of the date first written above.

THE TOWN OF GILBERT

  
Mayor

THE TOWN OF GILBERT  
WATER REVENUE BONDS, SERIES 2009 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.8

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

BRANCH BANKING AND TRUST CO., Gilbert, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The Town of Gilbert (the "Issuer"), passed by the Issuer on July 13, 2009, effective July 30, 2009, and a Supplemental Resolution adopted by the Issuer on July 30, 2009 (collectively, the "Ordinance"), authorizing the issuance of the Issuer's Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the aggregate principal amount of \$472,000, dated August 3, 2009, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

WITNESS my signature on this 3<sup>rd</sup> day of August, 2009.

BRANCH BANKING AND TRUST CO.

A handwritten signature in black ink, appearing to read "Kathy Brooks VP", written over a horizontal line.

Authorized Officer

**WV MUNICIPAL BOND COMMISSION**

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

**NEW ISSUE REPORT FORM**

Date of Report: August 3, 2009

ISSUE: The Town of Gilbert Water Revenue Bonds, Series 2009 A (United States Department of Agriculture)

ADDRESS: P.O. Box 188, Gilbert, WV 25621 COUNTY: Mingo

PURPOSE OF ISSUE: New Money X  
Refunding \_\_\_\_\_ Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: August 3, 2009 CLOSING DATE: August 3, 2009

ISSUE AMOUNT: \$472,000 RATE: 4.125%

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: None (Town pays USDA directly)

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: \_\_\_\_\_

CLOSING BANK: \_\_\_\_\_ ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Phone: (304) Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: USDA, Rural Utilities Service  
Contact Person: Vivian Carter Contact Person: Virginia McDonald  
Position: Recorder Function: Rural Development Specialist  
Phone: (304) 664-3752 Phone: (304) 420-6666  
thetownofgilbert@verizon.net

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
Check \_\_\_\_\_ Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
To Other: \$ \_\_\_\_\_

NOTES: The Bond Commission will only hold the Series 2009 A Bonds Reserve Account to be funded over 10 years. The Issuer will make debt service payments to USDA directly.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL and WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WEST VIRGINIA 25301  
TELEPHONE 304-558-2981

### PERMIT

(Water)  
PROJECT: Slabtown, Tamcliff and Paynter Bottom WATER LINE EXTENSION PERMIT NO.: 17,804

LOCATION: Slabtown & Tamcliff COUNTY: Mingo DATE: 12-12-2007

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Town of Gilbert Water Works  
Post Office Box 188  
Gilbert, West Virginia 25621**

is hereby granted approval to: install approximately 15,900 LF of 8", 7,300 LF of 6" and 2,000 LF of 2" water line; one (1) 100,000 gallon water storage tank; and all necessary valves, controls, and appurtenances.

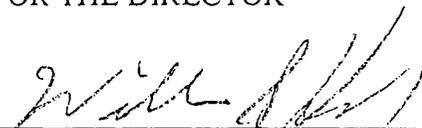
Facilities will serve approximately 172 customers in Slabtown, Tamcliff and Paynter Bottom along Routes 80 and 80/1 North of the Town of Gilbert.

**NOTE: This permit is contingent upon: 1) All new water line being disinfected, flushed and bacteriologically tested, prior to use; and 2) Enclosing the proposed 100,000 gallon water storage tank by a minimum six (6) feet high fence with a locking gate.**

The Environmental Engineering Division of the OEHS- St. Albans District Office, (304) 722-0611, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

  
William S. Herold, Jr., P.E., Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:emt

pc: E. L. Robinson Engineering Company  
James W. Ellars, P.E., PSC-Engineering Division  
Amy Swann, PSC  
Mingo County Health Department  
OEHS-EED St. Albans District Office

# ACORD INSURANCE BINDER

DATE  
07/02/2009

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

|  |   |   |                                 |
|--|---|---|---------------------------------|
| PRODUCER<br><b>Bray &amp; Oakley Insurance Agency, Inc.</b><br>P. O. Box 386<br>213 Main Street<br>Logan, WV 25601 | PHONE (304) 752-6850<br>FAX (304) 752-5380                    | COMPANY<br><b>General Star National Ins. Co.</b>  | BINDER #<br><b>809079201211</b> |
| AGENCY CUSTOMER ID<br><b>00002436</b>  | SUB CODE:   | DATE EFFECTIVE TIME<br><b>07/01/2009 12:01</b>  |                                 |
| INSURED<br><b>Town of Gilbert<br/>Box 188<br/>Gilbert, WV 25621</b>  | EXPIRATION DATE TIME<br><b>09/30/2009 X 12:01 AM<br/>NOON</b> |   |                                 |
| CODE   |   | X THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE-NAMED COMPANY PER EXPIRING POLICY # <b>NXG4004520</b> |                                 |
| DESCRIPTION OF OPERATION(S)/VEHICLE(S)/PROPERTY (Including Location)   |   |   |                                 |

**COVERAGES**

**LIMITS**

| TYPE OF INSURANCE   | COVERAGE/FORMS  | DEDUCTIBLE | COINS % | AMOUNT  |
|---|---|------------|---------|---|
| PROPERTY CAUSES OF LOSS<br><input type="checkbox"/> BASK <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC   |   |            |         |   |
| GENERAL LIABILITY<br>COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  |   |            |         | EACH OCCURRENCE \$<br>FIRE DAMAGE (Any one fire) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$<br>PRODUCTS - COMP/OP AGG \$                           |
| AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS | RETRO DATE FOR CLAIMS MADE  |            |         | COMBINED SINGLE LIMIT \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE \$<br>MEDICAL PAYMENTS \$<br>PERSONAL INJURY PROT \$<br>UNINSURED MOTORIST \$ |
| AUTO PHYSICAL DAMAGE DEDUCTIBLE<br><input type="checkbox"/> COLLISION<br><input type="checkbox"/> OTHER THAN COLL   | <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES |            |         | ACTUAL CASH VALUE \$<br>STATED AMOUNT \$<br>OTHER \$  |
| Garage Liability<br><input type="checkbox"/> ANY AUTO   |   |            |         | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY \$<br>EACH ACCIDENT \$<br>AGGREGATE \$   |
| EXCESS LIABILITY<br><input type="checkbox"/> UMBRELLA FORM<br>X OTHER THAN UMBRELLA FORM  | Following form excess<br>RETRO DATE FOR CLAIMS MADE                               |            |         | EACH OCCURRENCE \$ 2,000,000<br>AGGREGATE \$<br>SELF-INSURED RETENTION \$<br>WC STATUTORY LIMITS  |
| WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY  |   |            |         | E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$  |
| SPECIAL CONDITIONS/OTHER COVERAGES  |   |            |         | FEES \$<br>TAXES \$<br>ESTIMATED TOTAL PREMIUM \$   |

**NAME & ADDRESS**

|  |                    |
|--|--------------------|
| MORTGAGEE  | ADDITIONAL INSURED |
| LOSS PAYEE   |                    |
| LOAN #   |                    |
| AUTHORIZED REPRESENTATIVE<br><i>A. Clinton Dwyer</i> |                    |

**CERTIFICATE OF LIABILITY INSURANCE**

**ADDITIONAL INSURED:** TOWN OF GILBERT  
BOX 188  
GILBERT, WV 25621

**CERTIFICATE NO:** L 900000564 - Mar 1, 2006

This certifies that the insured named above is an Additional Insured for the Coverage indicated below under General Liability Policy GL 0936375 and Automobile Policy CA 0936177 issued to the State of West Virginia by NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA.

**COVERAGE PERIOD:** Jul 1, 2009 to Jul 1, 2010 12:01 a.m. Eastern Time

**COVERAGE AFFORDED:** Comprehensive General Liability Insurance  
Personal Injury Liability Insurance  
Professional Liability Insurance  
Stop Gap Liability Insurance  
Wrongful Act Liability Coverage  
Comprehensive Auto Liability Coverage  
Auto Physical Damage Insurance  
Garagekeepers Insurance

**LIMIT OF LIABILITY:** \$1,000,000 each occurrence\* and is SUBJECT TO \$2,500 DEDUCTIBLE. \*For all coverages combined. This limit is not increased if a claim is insured under more than one coverage or if claim is made against more than one insured.

**SPECIAL LIMITS:** The auto physical damage limit is the actual cash value of each vehicle subject to a deductible of \$1,000.

**CLAIM REPORTING:** Claims should be reported to:  
Claim Manager  
West Virginia Board of Risk & Insurance Management  
90 MacCorkle Avenue S.W. Suite 203  
South Charleston, West Virginia 25303

**Claims Made Prior Acts Date:** March 1, 2006

THE INSURANCE EVIDENCED BY THIS CERTIFICATE IS SUBJECT TO ALL OF THE TERMS, CONDITIONS, EXCLUSIONS AND DEFINITIONS IN THE POLICIES. IT IS A CONDITION PRECEDENT OF COVERAGE UNDER THE POLICIES THAT THE ADDITIONAL INSURED DOES NOT WAIVE ANY STATUTORY OR COMMON LAW IMMUNITY CONFERRED UPON IT.

BY:  DATED: June 10, 2009  
AUTHORIZED REPRESENTATIVE

AGENT OF RECORD: BRAY & OAKLEY INSURANCE AGENCY INC.

PO BOX 386  
LOGAN, WV 25601

**CERTIFICATE OF PROPERTY INSURANCE**

**INSURED:** TOWN OF GILBERT  
BOX 188  
GILBERT, WV 25621

**CERTIFICATE NO:** P 900000564 - Mar 1, 2006

This certifies that the Additional Insured named above is insured for first party Property Coverages procured and/or administered by the West Virginia Board of Risk and Insurance Management (BRIM). The coverages are provided through a combination of custom designed and conventional commercial insurance products.

THE INSURANCE EVIDENCED BY THIS CERTIFICATE IS SUBJECT TO ALL OF THE TERMS, CONDITIONS, EXCLUSIONS AND DEFINITIONS CONTAINED IN THE POLICIES.

**COVERAGE PERIOD:** Jul 1, 2009 to Jul 1, 2010 12:01 a.m. Eastern Time

**LIMIT OF LIABILITY:** Stated values, for real and personal property, which have been declared to and accepted by BRIM, not to exceed the maximum coverage procured by BRIM.

THIS POLICY DOES NOT COVER DAMAGE FROM FLOOD.  
FOR INFORMATION ABOUT FLOOD INSURANCE, CONTACT THE NATIONAL FLOOD INSURANCE PROGRAM OR YOUR INSURANCE AGENT.

**SPECIAL LIMITS:** Each policy shall be governed by the special limits of liability contained therein.

**DEDUCTIBLE:** The State of West Virginia has a \$1,000,000.00 deductible on coverages it procures. The above listed insured has a \$2,500 deductible that is applicable to each loss.

**CLAIM REPORTING:** Claims should be reported to:  
Claim Manager  
West Virginia Board of Risk & Insurance Management  
90 MacCorkle Avenue S.W. Suite 203  
South Charleston, West Virginia 25303

**BY:** [Signature] **DATED:** June 10, 2009  
**AUTHORIZED REPRESENTATIVE**

**AGENT OF RECORD:** BRAY & OAKLEY INSURANCE AGENCY INC.  
PO BOX 386  
LOGAN, WV 25601

**WATER OR WASTE SYSTEM GRANT AGREEMENT**  
**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**RURAL UTILITIES SERVICE**

THIS AGREEMENT dated \_\_\_\_\_ between

Gilbert, Town of

a public corporation organized and operating under

Chapter 8 Article 19, West Virginia Code

*(Authorizing Statute)*

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

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of \$ 2,889,478 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 1,972,000 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 1,972,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 917,478 or 31.75% percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

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

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed 31.75% percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

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

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes

of service, adopted by resolution dated \_\_\_\_\_, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

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

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

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

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 per centum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

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

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

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

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

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

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

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

[Revision 1, 04/17/1998]

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

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

**water distribution and storage system, including but not limited to various sized water lines, 100,000 gallon water storage tank, telemetry, touch read meters, and related appurtenances.**

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

[Revision 1, 04/17/1998]

1. Use of equipment.

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

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

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

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

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

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

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

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

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

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

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

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

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

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

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

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

N/A

M. Provide Financial Management Systems which will include:

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

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

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

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

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

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

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

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

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

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/97]

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

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

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$917,478.00, which it will advance to Grantee to meet not to exceed 31.75% percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

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

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

Termination of This Agreement

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

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

**Mayor**

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and attested and its corporate seal affixed by its duly authorized

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Attest:

*Yvian Carter*

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By:

---

(Title)

---

By:

*Vivian Livingood*

---

Vivian Livingood

(Title) Mayor

---

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By:

*Garry Powers*

---

(Title)



## WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard, East • Charleston, WV 25305-0311  
(304) 558-2234 • (800) 982-3386  
[www.wvopenforbusiness.com](http://www.wvopenforbusiness.com)

October 30, 2007

The Honorable John W. White  
Mayor  
Town of Gilbert  
Post Office Box 188  
Gilbert, West Virginia 25621

Dear Mayor White:

**RE: Fiscal Year 2007 Appalachian Regional Commission  
Project No: WV-15640-07  
Town of Gilbert-Slabtown, Tamcliff, Paynter Bottom, and Tharon Arnold Bottom  
Water Line Extension**

Congratulations on Governor Manchin's recent Appalachian Regional Commission award to the Town of Gilbert to extend the town's water service to the Slabtown, Tamcliff, Paynter Bottom, and Tharon Arnold Bottom areas of Mingo County. The award letter was the first step in securing the State/Local Contract and Release of Funds for the project.

### **State/Local Contract Requirements**

Enclosed is the grant agreement for this project. This project is being administered as a Small Cities Block Grant (SCBG) project; therefore, this project will assume the program characteristics of those funds. Please execute the agreement, and enclose a resolution accepting the conditions of this contract and authorizing your signature on the last page. The Community Development Division may cancel the grant and reallocate the grant funds if the grant agreement is not prepared, signed, and processed within 30 days of the date of this letter.

### **Release of Funds Requirements**

Please note that at this time you may not incur costs to be reimbursed with SCBG funds except for those costs relating to administration, engineering, and planning, as applicable. Otherwise, you may not obligate any other project funds until you have received a Notice of Approval of Evidentiary Materials and Release of Funds from the West Virginia Development Office. In order to secure the Release of Funds, you must first submit a Request for Approval of Evidentiary Materials and Release of Funds. We have enclosed a listing of all required documents that comprise this document.

All requested documentation must be submitted simultaneously with the request. You must complete these tasks within 120 days of the date of this letter. Failure to fulfill these requirements by the prescribed date may also lead to withdrawal of the SCBG funds. An extension can only be granted through the submission of a letter from the grantee detailing the justification for the specific information that cannot be submitted within this time frame. The request for an extension must be submitted 30 days prior to the 120-day deadline date.

The Honorable John W. White  
Page 2  
October 30, 2007

The SCBG Handbook provides a step-by-step guide on how to obtain release of funds, meet environmental requirements, meet all federal and state SCBG requirements, and successfully complete your project. Your project administrator will be provided with a copy of this handbook.

Please contact our office to schedule an implementation meeting to go over these requirements and ask any questions or share any concerns you may have concerning evidentiary materials and the administration of your project. You (or another elected representative), your project administrator, and any other personnel who will participate in the implementation of your SCBG program must be at this meeting.

During the implementation meeting, we will verify the method used to qualify your project. If you used HUD census data, we will need to see that documentation to ensure that the census and project area are coterminous. If you completed an income survey of the project area, then we will do a thorough review of all survey documentation. We will have to see the actual forms. Your project administrator may be able to assist you in securing the appropriate documentation.

If you have any questions concerning the requirements of this letter, please contact Mrs. Angela White Negley or me at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey Rowan". The signature is written in a cursive, flowing style.

Tracey Rowan, Manager  
Project Development Section  
Community Development Division

TR:anm

Enclosures

cc: Region II Planning and Development Council

# **EVIDENTIARY MATERIALS**

**PROJECT NAME: Town of Gilbert—Slabtown, Tamcliff, Paynter Bottom, and Tharon Arnold Bottom Water Line Extension**

**PROJECT NO.: WV-15640-07**

- (1) A detailed Project Performance Schedule which shows project completion within 36 months from the date of the grant agreement.
- (2) Certification of Financial Management System Compliance with the “Common Rule,” 24 CFR Part 85, requirements.
- (3) Environmental certification (per 24 CFR Part 58) with all applicable forms and backup documentation.
- (4) Certification of Commitments of Other Funds and copies of letters of commitment.
- (5) Copy of approved Residential Anti-displacement and Relocation Assistance Plan.
- (6) Disclosure Form Update.
- (7) Copy of approved Procurement Standards.
- (8) Copies of project administration agreements and engineering agreements.

**APPALACHIAN REGIONAL COMMISSION GRANT CONTRACT**  
**between the**  
**WEST VIRGINIA DEVELOPMENT OFFICE**  
**and the**  
**Town of Gilbert**

**THIS AGREEMENT**, entered into this 16th day of May, 2007, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office, hereinafter called the "State," and the Town of Gilbert and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the State has elected to administer an Appalachian Regional Commission Grant WV-15640-07, approved on May 16, 2007, under Section 214 of the Appalachian Region Commission Act of 1965, as amended, subject to the applicable regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR Part 570, Sub-Part I, as amended or revised, and subject to the scope of the State of West Virginia's Grants Management Handbook and other Program Guidelines, receipt of which is hereby acknowledged by the Grantee.

**WHEREAS**, the Grantee has identified its housing and community development needs, including those of low- and moderate-income persons and the activities to be undertaken to meet such needs.

**WHEREAS**, the Grantee has prepared a written citizen's participation plan which provides opportunities for citizen participation, hearings, and access to information with respect to the proposed project statement in such a manner as to afford affected citizens an opportunity for examination and comment regarding the proposed project and on the community development performance of the Grantee, a Community Development Plan, and an Anti-displacement and Relocation Assistance Plan.

**WHEREAS**, for audit purposes, the Catalog of Federal Domestic Assistance number is 23.002, Appalachian Supplements to Federal Grant-in-Aid (Area Development), Appalachian Regional Commission, funded by the Appalachian Regional Commission.

**WHEREAS**, the Grantee has requested assistance from the State and has offered assurances that maximum feasible priority has been given to activities which will benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight, or to meet other community needs having a particular urgency because an existing condition poses a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance to Grantee**. The State shall obligate to the Grantee, from funds allocated to the State by Grant Agreement WV-15640-07, \$1,500,000.00 to perform such tasks hereafter described in the Scope of Services.
2. **Scope of Services**. The Grantee, or its designated agent, in accordance with the Small Cities Block Grant Handbook other Program Guidelines to be used in administration of the Appalachian Regional Commission Grant, and in accordance with the approved application of the Grantee which is attached hereto and made a part hereof as Attachment A, shall do, perform, and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary to assist the Town of Gilbert to extend the town's water service to the Slabtown, Tamcliff, Paynter Bottom, and Tharon Arnold Bottom areas of Mingo County.
3. **Changes**. The State and the Grantee, from time to time, may require changes in the Scope of the Services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed which are mutually agreed upon by and between the State and the Grantee, shall be incorporated in written amendments to this Contract. Major changes in the Scope of Services which substantially deviate

from that originally approved shall require the same citizen participation process as performed for the initial submission of the grant proposal. The State reserves the right to make final determination on questions regarding changes in the Scope of Services.

4. **Time of Performance.** The Grantee will commence its duties under this Contract on May 16, 2007, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by May 16, 2010. Completion date of this Contract may only be extended by mutual written agreement of both parties.

5. **Performance Measures.** Performance measures establish that the Grantee should have all other funding in place and design and engineering completed within twelve months. Furthermore, construction should be started within eighteen months after the execution of this Agreement by both parties. These performance measures establish goals against which performance under this contract can be measured and evaluated during regular scheduled monitoring visits by the State. Failure to meet these performance measures can result in termination of this contract (see Provision 10 of this agreement).

6. **Administrative Requirements and Procedures.**

(A) *Personnel.* The Grantee represents that it has or will secure personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of, or have any contractual relationship with the State, consistent with the procedures identified in the Small Cities Block Grant Handbook.

(B) *Applicable Law.* The Grantee, its agents, and subrecipients shall comply with all the restrictions, conditions, policies, guidelines, and requirements of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended; with all applicable State and Federal Laws and regulations including 24 CFR Part 570; 24 CFR Part 85; OMB Circulars A-87, A-110, A-122, and A-133, as applicable, in administering and distributing funds provided under this Agreement including, but not limited to, the following:

(1) P.L. 88-352: Refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations are found in 24 CFR Part I.

(2) P.L. 90-284: Refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-20 et. seq.) popularly known as the Fair Housing Act which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap, or familial status. The Grantee further certifies that it will take actions necessary to affirmatively further fair housing.

(3) Executive Order 11063, as amended by Executive Order 12259, requires that taking of all actions necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use of occupancy thereof. Implementing regulations are contained in 24 CFR 107.

(4) Section 109 of P.L. 93-383 requires that no person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds.

Section 109 of the Act further provides any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified handicapped person as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply.

(5) Section 110 of P.L. 93-383 requires compliance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). By reason of the foregoing requirement,

the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) also applies. In addition , the West Virginia Act on Construction of Public Improvements, Article 5A, Chapter 21 of the West Virginia Code applies.

(6) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) requiring that to the greatest extent feasible opportunities for employment and training be given to lower income persons residing within the unit of local government or metropolitan area or nonmetropolitan county in which the project is located, and that Contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the same area.

(7) Executive Order 11246, as amended by Executive Order 12086 shall apply and provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

(8) Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831b) prohibits the use, and requires the elimination and/or abatement of the hazards of lead-based paints in residential structures constructed or rehabilitated with Federal assistance to include notification of the hazards of lead-based paint. The Lead Safe Housing Regulation (24 CFR Part 35) established the requirements for notification, evaluation, and reduction of lead-based paint hazards in federally-owned residential property and housing that receives federal assistance.

(9) The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and action as specified and required in regulations issued by the Secretary of Housing and Urban Development pursuant to Section 104(g) of the Act and published in 24 CFR Part 58. In addition to assuming responsibility for National Environmental Policy Act (P.L. 91-190), the Grantee must take into account, where applicable, the criteria, standards, policies, and regulations of the following: (a) Historic Preservation Act of 1966; (b) Executive Order 11593; (c) The Reservoir Salvage Act of 1960; (d) Flood Disaster Protection Act of 1973; (e) Executive Order 11988, Floodplain

Management; (f) Executive Order 11990, Protection of Wetlands, (g) Coastal Zone Management Act of 1972; (h) the Safe Drinking Water Act of 1974; (i) the Endangered Species Act of 1973; (j) the Wild and Scenic Rivers Act of 1968; (k) the Clean Air Act ; (l) Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979); (m) 24 CFR Part 51, Subpart B, Noise Abatement and Control; (n) Subpart C - Siting of HUD Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature; (o) and Subpart D - Siting of HUD Projects in Runway Clear Zones and Accident Potential Zones at Military Airfields. Before committing any funds (other than for exempt activities), the Grantee must certify to the State that it has complied with all requirements and obligations that are set forth by 24 CFR Part 58. In addition, the Grantee must submit all requested Evidentiary Material to the State for approval prior to the obligation of any funds (other than for exempt activities).

(10) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The West Virginia Code, Chapter 54-3 also applies.

The Grantee must certify compliance with URA. Under Section 104(d) of the Act, each Grantee must adopt, make public and certify that it is following a residential anti-displacement and relocation assistance plan providing one-for-one replacement units and relocation assistance. The plan must also indicate the steps that will be taken to minimize the displacement of persons from their homes as a result of any activities assisted under this part all in accordance with 24 CFR Part 570.488(b).

(11) The State and the Grantee will comply with the provisions of the Department of Treasury Circular 1075 and/or the State's Small Cities Block Grant Handbook, as revised, in the process of requesting and administering funds from the State's Letter of Credit.

(12) Funds provided under this agreement shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program; and flood insurance is obtained in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973.

(C) *Accounting.* The Grantee will establish a separate account for the proper recording of project costs in accordance with generally accepted accounting principles and procedures so as to reflect all receipts and allowable expenditures, including program income in connection with the said project and the purpose thereof. PI generated prior to project closeout must be expended as received for project related activities in accordance with 24 CFR 570. If the Grantee received less than \$25,000 per state fiscal year in program income after closeout, the dollars received are not subject to provision of 24 CFR 570 and may be used at the Grantees discretion. If program income exceeds \$25,000 in any given state fiscal year after closeout, all program income earned must be expended in accordance with 24 CFR 570.489.

(D) *Audit.* Pursuant to provisions of Chapter 6, Article 9, Section 7 of the West Virginia Code, the Community Development Division has adopted the policy of accepting annual financial audits contracted or performed by the State Auditor's Office. The Grantee will include these funds to be audited with its yearly organization-wide audit. Audits shall be conducted in accordance with the provisions of the Office of Management and Budget (OMB) Circular A-133, and with standards established by the Comptroller General as specified in Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Units of local government will make audit reports available for public inspection within thirty (30) days after the completion of the audit.

(E) *Record Retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the grant shall be retained for a period of three years, with the following qualifications:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds shall be retained for three years after its final disposition.

(3) Records for displacement shall be retained in accordance with the Small Cities Block Grant Handbook.

(4) The retention period starts from the date of the issuance of the final audit report.

(F) *Access to Records.* The Grantee shall, at any time during normal business hours and as often as the State or its designated representatives deem necessary, make available for examination all records, books, accounts, reports, files, and other papers, things or property of the Grantee with respect to the matters covered by this Contract. All negotiated contracts awarded by the Grantee shall include a provision that the Comptroller General or any duly authorized representative of the State or HUD shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(G) *Repayment.* The Grantee shall refund to the State or Federal government any expenditures determined to be made for an ineligible purpose for which Federal funds were received.

(H) *Competitive Procurement Procedures.* All procurement transactions, including professional services, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with procedures identified in the Small Cities Block Handbook, 24 CFR Part 85, and with applicable local or State law.

The Grantee shall procure architect/engineer services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 24 CFR Part 85.

The Grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code and be in compliance with federal regulations 24 CFR Part 85.

The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to their project which has an estimated value of over \$25,000. All transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities. Any attempts by the Grantee to segregate the project into sections in order to circumvent competitive procurement may be cause for termination of this Agreement under the provisions of Paragraph 9. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, sending notification to the State's Small Business Development Center Division, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the State or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.

Grantees have the ability to procure professional and construction services, therefore, the design-build method (5-22A-1). Public agencies can only utilize design-build on building project. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

(I) *Bonding and Insurance.* As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under

\$100,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$100,000. If the contracts or subcontracts exceeds \$100,000, the minimum bonding and insurance requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with a contract to secure fulfillment of the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor or materials in the execution of the work provided for in the Contract.

(J) *Facilities Operation.* The Grantee shall operate and maintain all facilities to which the general public has right of access constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable Federal, State and local statute, law, ordinance, or regulation as to actual construction procedures. The Grantee shall be responsible for maintenance and operation of such facilities upon completion. The Grantee may not change the use or planned use of any such facility (including the beneficiaries of such use) from that purpose initially approved unless the Grantee provides affected citizens with reasonable notice thereof and opportunity to comment on any proposed change all in accordance with 24 CFR Part 570.489(j).

(K) *Conflict of Interest.* No officer, agent, consultant, employee, elected or appointed official of the State, the Grantee, or any public agency or subrecipient receiving Community Development Block Grant funds who exercises or has exercised any function or responsibilities with respect to activities assisted with Community Development Block Grant funds or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from such activity or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. The conflict of interest provision of 24 CFR 85.36; 24 CFR 570.489 (g) and (h); and OMB Circular A-110 also apply as appropriate.

7. **Recovery of Capital Costs.** The Grantee will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds from this program by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless: (a) funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from other revenue sources; or (b) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the Grantee certifies to the State of West Virginia that it lacks sufficient funds received under the program to comply with the requirements of clause (a).

8. **Method of Payment.** In order to receive any and all payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. Upon receipt of said documents, the State shall review the same for reasonableness, appropriateness and eligibility and, if approved, will cause a warrant to be made on that sum to the Grantee for

authorized expenditures from the State's Letter of Credit with the Department of Housing and Urban Development.

9. **Cost Underuns.** The State reserves the right to recapture all SCBG funds remaining due to cost underuns. The amount to be recovered will be prorated and proportional to the percent of actual total project expenditures.

10. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner its obligations under this Contract or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract by giving written notice to the Grantee to such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract by the Grantee, and the State may withhold any payments to the Grantee for the purpose of offsetting those damages until such time as the exact amount of damages due the State from the Grantee is determined.

11. **Termination for Convenience of the State.** The State may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the State as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

12. **Termination by the Grantee.** The Grantee may unilaterally rescind this Agreement at any time prior to the commencement of the project. After project commencement, this Agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the State makes any expenditure or incurs any obligation with respect to the project.

13. **Reporting.** A Final Performance Report shall be submitted to the State with the final request for payment for project costs, excluding audit. Said Performance Report shall be made on the forms provided by the State and meet the requirements of said report as set forth in the appropriate Small Cities Block Grant Handbook of the State of West Virginia. Other reports may be requested by the State during the grant period as the State deems necessary and directs.

14. **Final Closeout.** Final Closeout shall be completed when the State: (a) is in receipt of a Final Performance Report; (b) has determined that all monitoring findings have been formally addressed and are resolved; and (c) has received a completed, final project audit and has determined that any findings have been resolved.

15. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division of the West Virginia Development Office or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

16. **Notice.** The parties hereto agree that notice shall be served when mailed certified U.S. Mail to the following addresses:

West Virginia Development Office  
**Community Development Division**  
Capitol Complex  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

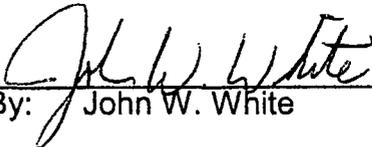
GRANTEE Town of Gilbert  
Post Office Box 188  
Gilbert, West Virginia 25621

**[WITNESSETH]** that the parties hereto have entered their signatures hereafter with each representing to the other that the execution of this Agreement is done with full authority and that attached hereto and made a part hereof as Attachment B, is a certified copy of the resolution, motion, or similar action of the governing body of the Grantee directing and authorizing its official representative to act in connection with this Agreement.

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE**

\_\_\_\_\_  
Stephen Spence, Executive Director

**Town of Gilbert**

  
\_\_\_\_\_  
By: John W. White

**FEDERAL EMPLOYER IDENTIFICATION NUMBER**

55-051-9751  
F.E.I.N.

**CLOSING MEMORANDUM**

**To:** Vivian Carter  
Vivian Livingood  
Theresa Miller  
Samme Gee

**From:** Ryan White

**Date:** August 3, 2009

**Re:** Town of Gilbert Water Revenue Bonds,  
Series 2009 A (United States Department of Agriculture)

---

**1. DISBURSEMENTS TO TOWN**

A. Payor: United States Department of Agriculture  
Source: Series 2009 A Bonds Proceeds  
Amount: \$35,284.67  
Date: August 3, 2009  
Form: Electronic Funds Transfer  
Payee: Town of Gilbert  
Bank: Branch Banking and Trust Co.  
Routing No. 051503394  
Account No. 0005175883438  
Account: Series 2009 A Bonds Construction Trust Fund

August 3, 2009

The Town of Gilbert  
Gilbert, West Virginia

United States Department of Agriculture  
Rural Utilities Service  
Parkersburg, West Virginia

Re: The Town of Gilbert Water Revenue Bonds, Series 2009 A  
(United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to The Town of Gilbert (“the Issuer”), a municipal corporation, in connection with the issuance of its Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$472,000, in the form of one bond, bearing interest from the date hereof, on the amount advanced thereunder, at the rate of 4.125% per annum.

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 of the Code of West Virginia, 1931, as amended (the “Act”), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the “Project”) and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on July 13, 2009, effective July 30, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on July 30, 2009 (collectively, the “Ordinance”), pursuant to and under which Act and Ordinance the Bonds are authorized and issued. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance 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 created 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 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 their terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Government 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.

4. 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.

5. The Bonds have not been issued on the basis that the interest 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.

The Town of Gilbert  
United States Department of Agriculture  
August 3, 2009  
Page 3

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,

A handwritten signature in cursive script that reads "Jack Kelly" followed by three horizontal lines.



*James A. Walker*



Counselor and Attorney at Law

218 Stratton Street  
Post Office Box 358  
Logan, West Virginia 25601

Walker Building  
Phone (304) 752-0757  
Fax (304) 752-0758

August 3, 2009

The Town of Gilbert  
P.O. Box 428  
Gilbert, West Virginia 25621

United States Department of Agriculture  
Rural Utilities Service  
Parkersburg, West Virginia

Jackson Kelly PLLC  
Charleston, West Virginia

Re: The Town of Gilbert Water Revenue Bonds, Series 2009 A  
(United States Department of Agriculture)

Ladies and Gentlemen:

I am counsel to The Town of Gilbert in Mingo 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"), the Letter of Conditions dated April 11, 2007, and all amendments thereto, from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), a Bond Ordinance duly passed by the Issuer on July 13, 2009, effective July 30, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on July 30, 2009 (collectively, the "Ordinance"), and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein.

The Town of Gilbert  
United States Department of Agriculture  
Jackson Kelly, PLLC  
August 3, 2009  
Page 2

I am of the opinion that:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law.

2. 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.

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

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds 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 of or default under any ordinance, order, resolution, agreement or other document 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.

5. 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 permits, approvals, Orders and certificates from the West Virginia Bureau for Public Health and the Public Service Commission of West Virginia (the "PSC"). The Issuer has taken all actions required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges as modified by the PSC in a Recommended Decision of the Administrative Law Judge dated August 28, 2008, as made final by the PSC on

The Town of Gilbert  
United States Department of Agriculture  
Jackson Kelly, PLLC  
August 3, 2009  
Page 3

September 17, 2008, in Case No. 08-0786-W-MA. The Issuer has received the Recommended Decision of the Administrative Law Judge entered on November 7, 2008, as made final by the PSC on November 27, 2008, in Case No. 08-0411-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 such order has expired prior to the date hereof. Such orders remain in full force and effect.

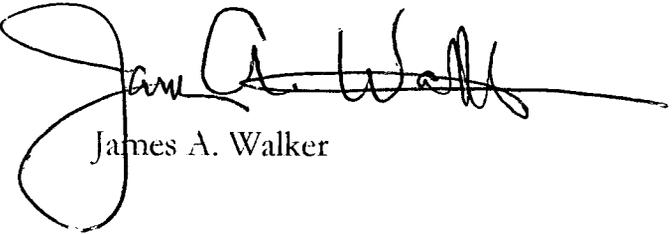
6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any Court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds and the Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Gross Revenues for the payment of the Bonds.

7. 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 interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act and the Ordinance; 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.

The Town of Gilbert  
United States Department of Agriculture  
Jackson Kelly, PLLC  
August 3, 2009  
Page 4

Very Truly Yours,

A handwritten signature in black ink, appearing to read "James A. Walker". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James A. Walker

JAW:blm

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

|  |  |          |
|--|--|----------|
| LOAN APPLICANT<br>Town of Gilbert                  | ADDRESS OR PROPERTY COVERED BY THIS OPINION<br>P.O. Box 428<br>Gilbert, WV 25631 |          |
| APPLICANT FOR TITLE EXAMINATION<br>Town of Gilbert | COUNTY Mingo   | STATE WV |

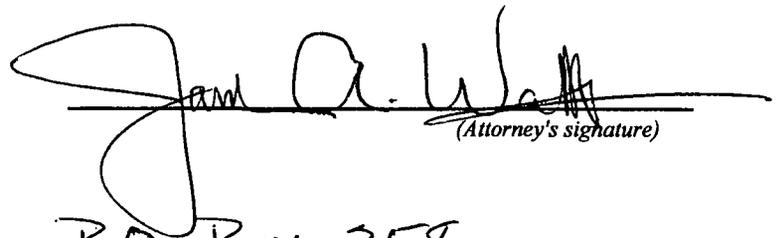
- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to August 3, 2009, at \_\_\_\_\_ a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in \_\_\_\_\_  
\_\_\_\_\_
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid \_\_\_\_\_ lien on said property as required by Rural \_\_\_\_\_  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

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

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

8/3/09

(Date)



(Attorney's signature)

P.O. Box 358

Logan, WV 25601

(Address, include ZIP Code)

Attachments

#516

THIS DEED OF CONVEYANCE, made and entered into this the 17th day of June, 1961, by and between GEORGE W. ELLIS and ESTELLE H. ELLIS, his wife, parties of the first part and grantors, and the TOWN OF GILBERT, GILBERT, WEST VIRGINIA, a municipal corporation, party of the second part and grantee.

W I T N E S S E I H :

That for and in consideration of the sum of Five Hundred Dollars (\$500.00) cash in hand paid by the party of the second part to the parties of the first part, the receipt of all of which is hereby acknowledged, the parties of the first part have bargained and sold, and by these presents bargain, sell, grant and convey, with covenants of GENERAL WARRANTY OF TITLE, unto the party of the second part, the following described real estate, locate and situate in Stafford District, Mingo County, West Virginia, and more particularly described as follows:

BEGINNING at a corner fence post in the northwest corner of Lot No. 255 in the Ellis Addition to the Town of Gilbert, running N 77 deg. 30' W a distance of 120 ft. to a hub; thence N 12 deg. 30' E a distance of 100 ft. to a hub; thence S 77 deg 30' E a distance of 76.45 ft. to a hub, and thence S 11 deg. 9' E a distance of 108 ft. to the point of BEGINNING.

The above described property is in all respects a part of the property which was conveyed unto the grantors herein by G. E. Ellis, et al., by deed dated March 28, 1946, and of record in the Office of the Clerk of the County Court of Mingo County, West Virginia, in Deed Book No. 99, at page 387.

TO HAVE AND TO HOLD unto the party of the second part, its successors and assigns, forever.

WITNESS the following signatures and seals, as of the day, month and year first hereinbefore written.

*George W. Ellis* (SEAL)  
(George W. Ellis)

*Estelle H. Ellis* (SEAL)  
(Estelle H. Ellis)

DEED BOOK 140 PAGE 302

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

I, J. Bruce Lamm, a Notary Public in and for the County and State aforesaid, do hereby certify that GEORGE W. ELLIS and ESTELLE H. ELLIS, his wife, whose names are signed to the writing above, bearing date the 17th day of June, 1961, have this day acknowledged the same before me in my said County.

I further certify that my commission as Notary Public will expire on the 29<sup>th</sup> day of January, 1961.

Given under my hand, in the County and State aforesaid, this the 1<sup>st</sup> day of June, 1961.

J. Bruce Lamm  
NOTARY PUBLIC

DECLARATION OF CONSIDERATION OR VALUE

I hereby declare that the total consideration paid for the property conveyed by the document to which this declaration is appended is \$500.00.

Given under my hand, this 1<sup>st</sup> day of June, 1961.

George W. Ellis Grantor  
(George J. Ellis)  
Gilbert, West Virginia

Exempt - Municipal Corporation

516

OFFICE OF THE CLERK OF THE COUNTY COURT August 29, 1961-----2:33 P.M.  
MINGO COUNTY, WEST VIRGINIA,

The foregoing writing together with the certificate of acknowledgment thereof, thereto annexed, was this day admitted to record in said office.

Recording Fee \$1.75

TESTE: Earl J. Judd CLERK.

36938

# 518

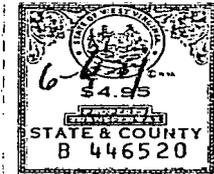
FOR and in consideration of the sum of Two and 00/100 (\$ 2.00) Dollars, and other good and valuable considerations not expressed herein, the receipt and sufficiency of all of which is hereby acknowledged, We Paul M. ...

do hereby grant unto Atlantic Coastal Corp Company, its successors and assigns, the right to erect, maintain, operate and finally remove a Cathodic Protection Station on our lands in Stafford District, Mingo County, West Virginia, with the right to connect inlet and outlet electric lines to and from same, and with the right of ingress and egress; said Cathodic Protection Station to be located as shown on map attached. As a part of the consideration hereof, grantors covenant to grant any necessary power line right of way to

5831

THIS DEED OF CONVEYANCE, made and entered into this 31<sup>st</sup> day of May, 1984, by and between GEORGE ELLIS, single, of General Delivery, Gilbert, West Virginia; DAVID H. ELLIS and WILMA ELLIS, his wife, each in their own right and as the spouse of the other, of 1314 Fletcher Avenue, Dunbar, West Virginia; MARJORIE ELLIS HASLEY and GENE HASLEY, her husband, each in their own right and as the spouse of the other, of 1193 Oak Glen, Santa Ynez, California 93460; and RICHARD N. ELLIS and MARY ELLEN ELLIS, his wife, each in their own right and as the spouse of the other, of Box 16, Gilbert, West Virginia, hereinafter referred to as "FIRST PARTIES" and TOWN OF GILBERT, Gilbert, West Virginia, hereinafter referred to as "SECOND PARTY".

W I T N E S S E T H:



That for and in consideration of the sum of One Thousand Three Hundred Fifty Dollars (\$1,350.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Parties of the First Part do hereby sell, grant and convey with covenants of GENERAL WARRANTY of title, unto the Second Party, that certain tract or parcel of land locate and situate on the northern side of U. S. Rt. 52 at Gilbert, Mingo County, West Virginia, being more particularly bounded and described as follows, to-wit:

BEGINNING at the northwest corner of Lot 255 of the Ellis Addition to the Town of Gilbert; thence with the following:

- N11°09'W, 108.00 feet;
- S77°30'E, 18.99 feet;
- S11°09'E, 108.00 feet;
- N77°30'W, 18.99 feet to the point of beginning and containing 2,050 square feet and being more particularly described on the attached plat.

This being a part of the same property conveyed to Richard N. Ellis, David H. Ellis and Marjorie Ellis Hasley from George Ellis, by deed dated August 12, 1970 and recorded in Deed Book 197 at Page 84 in the office of the Clerk of the County Commission of Mingo County, West Virginia. In this particular Deed of Conveyance, George Ellis, one of the grantors herein,

DEED BOOK 274 page 523

reserved a life estate and George Ellis does now join in this particular Deed in order to convey and extinguish any life estates that he might have in the subject property.

A map of the hereinbefore described tract of land is attached to this Deed of Conveyance and is incorporated by reference as if fully copied herein.

TO HAVE AND TO HOLD unto the Party of the Second Part, its successors and assigns forever.

IN WITNESS WHEREOF, the First Parties have hereunto subscribed their names as of the day, month and year first hereinbefore written

George Ellis  
GEORGE ELLIS

David H. Ellis  
DAVID H. ELLIS

Wilma Ellis  
WILMA ELLIS

Marjorie Ellis Hasley  
MARJORIE ELLIS HASLEY

Gene Hasley  
GENE HASLEY

Richard N. Ellis  
RICHARD N. ELLIS

Mary Ellen Ellis  
MARY ELLEN ELLIS

STATE OF West Virginia  
COUNTY OF Mingo

I, Craig Collins, a Notary

Public in and for the State and County aforesaid, do hereby certify that the foregoing was produced before me by GEORGE ELLIS, and ac

MICHAEL THORNSBURY  
ATTORNEY AT LAW  
P.O. BOX 1813  
WILLIAMSON, WV 25661  
304/235-0004

DEED BOOK = 274 page 524

knowledge to be his free act and deed on this 6th day of March, 1984.

My commission expires Feb. 14, 1988.

Craig Colin  
NOTARY PUBLIC

STATE OF West Virginia  
COUNTY OF Kanawha

I, James K. Fisher, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing was produced before me by DAVID H. ELLIS and WILMA ELLIS, his wife, and each have acknowledged the same to be their free act and deed on this 8th day of March, 1984.

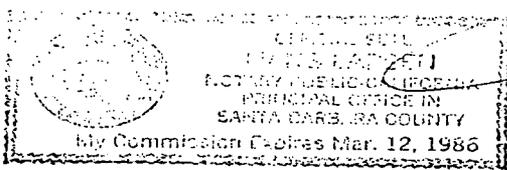
My commission expires Feb. 19, 1991.

James K. Fisher  
NOTARY PUBLIC

STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

I, HANS LARSEN, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing was produced before me by MARJORIE ELLIS HASLEY and GENE HASLEY, her husband, and each have acknowledged the same to be their free act and deed on this 20th day of MARCH, 1984.

My commission expires MARCH 12, 1986.



Hans Larsen  
NOTARY PUBLIC

HAEL THOMSBURY  
ATTORNEY AT LAW  
P.O. BOX 1813  
LLIAMSON, WV 25661  
304/236-8004

DEED BOOK - 274 page 525.

STATE OF West Virginia

COUNTY OF Mingo

I, Craig C. Eli, a Notary

Public in and for the State and County aforesaid, do hereby certify that the foregoing was produced before me by RICHARD N. ELLIS and MARY ELLEN ELLIS, his wife, and each have acknowledged the same to be their free act and deed on this 6th day of March 1984.

My commission expires Feb. 14, 1988.

Craig C. Eli  
NOTARY PUBLIC

DECLARATION OF CONSIDERATION

I hereby declare that the total consideration paid for the property conveyed by the document to which this declaration is appended is \$1,350.00.

Given this 21 day of May, 1984.

George W. Ellis  
GEORGE ELLIS

This instrument prepared by:

Michael Thornsbury  
MICHAEL THORNSBURY  
Attorney at Law  
P. O. Box 1813  
Williamson, West Virginia 25661

MICHAEL THORNSBURY  
ATTORNEY AT LAW  
P.O. BOX 1813  
WILLIAMSON, WV 25661  
304/235-0004

DEED BOOK = 274 page 526

D R A F T

July 6, 1983

Town Of Gilbert

Gilbert, WV

Proposed Reservoir Site

Description Of Take From George W. Ellis

Beginning at the northwest corner of Lot 255 of the Ellis Addition to the Town of Gilbert; thence with the following:

N11°09'W, 108.00 feet;

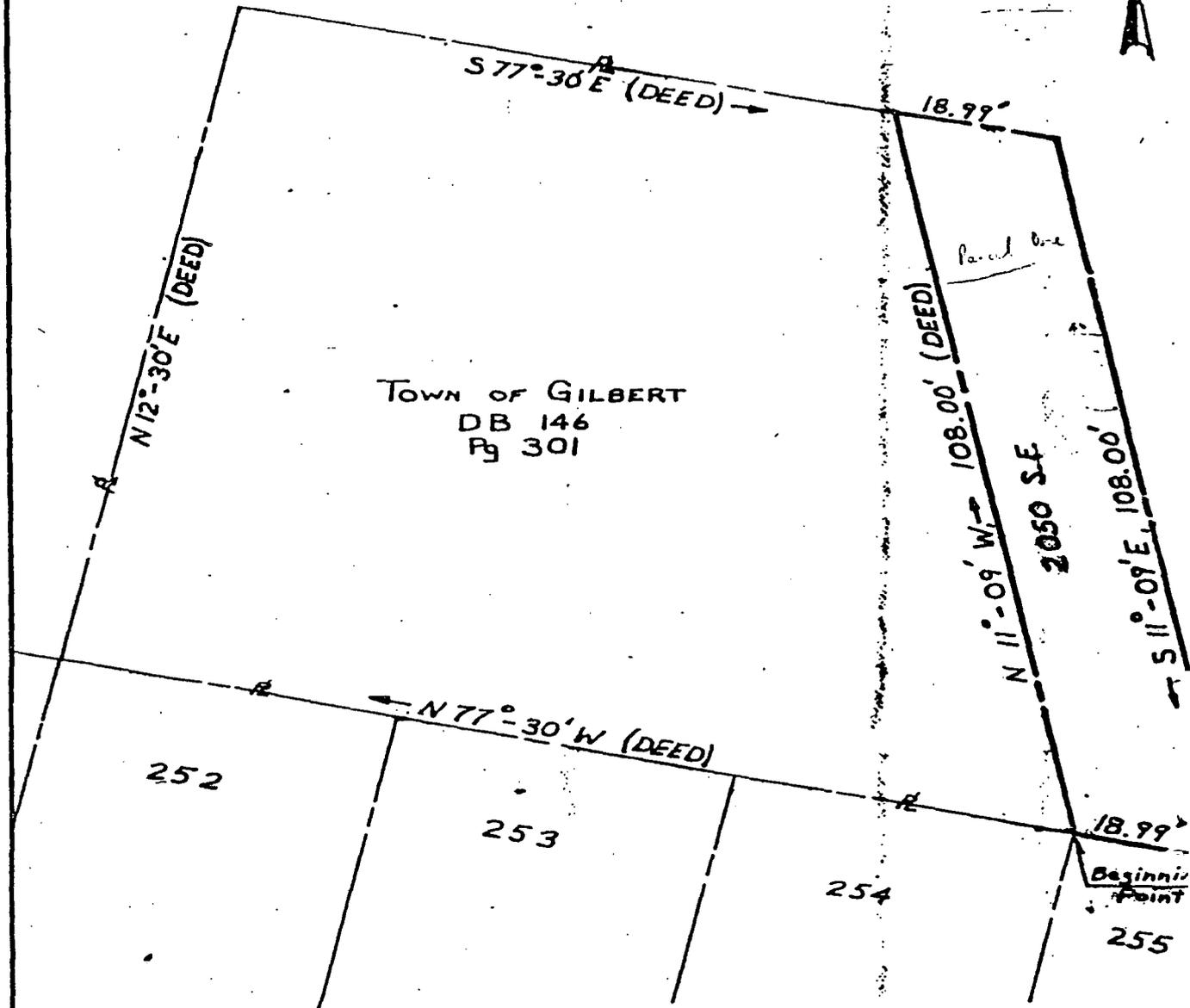
S77°30'E, 18.99 feet;

S11°09'E, 108.00 feet;

N77°30'W, 18.99 feet to the point of beginning and containing 2,050 square feet and being more particularly described on the attached plat.

DEED BOOK - 274 page 527.

GEORGE W. ELLIS  
DB 99 Pg 387



Plat Showing 2050 S.F. Lot, Town of Gilbert, Mingo County, West Virginia  
To Be Conveyed By George W. Ellis To The Town of Gilbert.

Scale : 1" = 20'-0"

Certified Correct To The Best Of My Knowledge And Belief.

*Ronald A. Rooks*

7-8-8  
Date

STD 12-59

DEED BOOK = 274 page 528

STATE TAX COMMISSIONER OF WEST VIRGINIA  
SALES LISTING FORM

W. Va. Code 11-23-6-1925

County Mingo District Stafford

Tax Map No. (s) \_\_\_\_\_ Parcel(s) \_\_\_\_\_

Grantor's Name George Ellis, David H. Ellis, Wilma Ellis, Marjorie Ellis Hasley,

~~XXXXXXXXXX~~ Gene Hasley, Richard Ellis, Mary E. Ellis, (Grantees-Town of Gilbert)

Most Recent Previous Deed Book No. 197 Page No. 84

Grantor's Source of Title: \_\_\_\_\_  
(If not by "Previous Deed" referenced above)

Mailing Address of the new owner: Gilbert, West Virginia

Consideration/Value (a) Real Estate \$ \$1,350.00 (b) Other Valuable Goods/Services: \$ \_\_\_\_\_  
(If applicable)

Estate(s) Transferred: Surface  
(Examples: Fee, Surface, Mineral, Coal, etc.)

Financing Arrangements Materially Affecting Consideration: Yes \_\_\_\_\_ No \_\_\_\_\_

If "Yes," use Appropriate Word or Phrase to Describe: \_\_\_\_\_

To be completed by Clerk: \_\_\_\_\_

Stamp Fee Paid \$ \_\_\_\_\_ Date Recorded \_\_\_\_\_

M. Paul Shumlin  
Name of Person Who Prepared this Document

New Deed Book No.: \_\_\_\_\_ Page No.: \_\_\_\_\_

Pink Copy - Tax Commissioner's Copy

OFFICE OF THE CLERK OF THE COUNTY COURT  
MINGO COUNTY, WEST VIRGINIA 11 529 6-7-84  
303 THE FOREGOING WRITING TOGETHER WITH THE CERTIFICATE  
OF ACKNOWLEDGEMENT THEREOF, HERETO ANNEXED, WAS THIS DAY  
ADMITTED TO RECORD IN SAID OFFICE Shumlin  
RECORDING FEE 650 CLERK

1961, has this day acknowledged the same before  
me in my said county.

My COMMISSION expires on the 4th day of Jan,  
1962.

GIVEN under my hand this 18th day of October,  
1961.

971

*Sara E. Linkous*

OFFICE OF THE CLERK OF THE COUNTY COURT  
MINGO COUNTY, WEST VIRGINIA,

NOTARY PUBLIC

October 25, 1961-----12:06 P.M.

The foregoing writing together with the certificate of acknowledgment  
thereof, thereto annexed, was this day admitted to record in said office.

Recording Fee \$2.25

TESTE: *E. J. [Signature]* CLERK

#965

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

TOWN OF GILBERT, a  
municipal corporation,

Petitioner,

vs.

Upon Petition to Condemn  
Land for Public Use

MYRTLE BELCHER, PEGGY  
BELCHER ELLIS and  
CLIFFORD E. ELLIS, her  
husband,

Defendants

FINAL ORDER

THIS DAY, came the Town of Gilbert, a municipal corporation, by  
its attorney, J. Brooks Lawson, Jr., and reported unto the Court that  
heretofore on the 11th day of October, 1961, the report of the Commission-  
ers was filed in this cause and that neither party has demanded a trial

ORDERED THAT SAID REPORT OF SAID COMMISSIONERS BE CONFIRMED.

THHEREUPON the said applicant, the Town of Gilbert, a municipal corporation, tendered and asked leave to pay into Court, on unto said defendants, the sum of FIVE HUNDRED DOLLARS (\$500.00), as ascertained

by the said Commissioners as compensation and damages to the said defendants for the land proposed to be taken as in said petition and report mentioned and fully described as follows:

Beginning at a point, in the extension of west line of First Avenue, said point being S 75-50 W 10.00 ft. from a 1-Rail in the west line of Railway Company right-of-way, said rail being at an off-set in right-of-way; thence running with remaining extension of west line of First Avenue.

S 31-07 E 65.0 ft. more or less to a point in the intersection of the remaining extension of west line of First Avenue and the west line of Railway Company right-of-way; thence running with part of said right-of-way, which has a radius of 1707.28 ft., in a southern direction of 12.0 ft. more or less, to a point in the intersection of west line of right-of-way and the right-of-way line of the State Road Commission of West Virginia; thence running with part of the north line of said right-of-way toward river; thence

S 45-07 W 60.0 ft. more or less to a point in the edge of low water mark of Guyandotte River; thence running down and with the low water mark of said river 117.0 ft. more or less to a point; thence leaving the low water mark of said river and running up the river bank toward railroad; thence

N 75-50 E 83.50 ft. more or less to the place of beginning.

IT IS THEREFORE ORDERED by the Court, that the easements in, over and through the said lands so taken and paid for as described herein, in said petition and report, and the plat and description thereof to be filed in the Office of the Clerk of the County Court of Mingo County, West Virginia, shall be absolutely vested in the Town of Gilbert, a municipal corporation, and that the costs of this proceeding be paid as provided by law.

IT IS FURTHER ORDERED that a copy of this order be certified by the Clerk of this Court to the Clerk of the County Court of said County to be recorded and indexed by him in the proper deed book of said County in the same manner as deeds are required to be recorded and indexed, as is provided by law and a certified copy thereof be transmitted to the Town of Gilbert, Gilbert, West Virginia.

IT IS FURTHER ORDERED BY THE COURT, that the Clerk of this Court be and he is hereby authorized and directed to pay the said sum of FIVE HUNDRED DOLLARS (\$500.00), by issuing his check therefor to the defendants named herein.

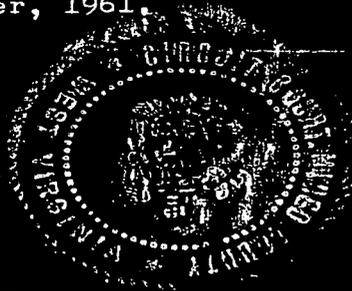
If appearing that there is nothing further to be done in this cause, the Clerk is directed to exit the same from his docket.

ORDER. ENTER, (s) Chas. W. Ferguson  
Judge

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

I, JOE W. HATFIELD, CLERK OF THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA, do certify that the foregoing is a true and correct copy of that certain Petition to Condemn Land for Public Use, styled TOWN OF GILBERT, a municipal corporation, Vs. MYRTLE BELCHER, PEGGY BELCHER ELLIS and CLIFFORD E. ELLIS, her husband, which is recorded and found in my office, in Law Order Book No. 38, at Page \_\_\_\_.

Given under my hand and official seal this the 24th day of October, 1961.



*Joe W. Hatfield*  
Circuit Court Clerk of Mingo  
County, West Virginia.

965

OFFICE OF THE CLERK OF THE COUNTY COURT  
MINGO COUNTY, WEST VIRGINIA,

October 24, 1961-----3:39 P. M.

The foregoing writing together with the certificate of acknowledgment thereof, thereto annexed, was this day admitted to record in said office.

Recording Fee \$1.25

TESTE: *E. J. ...* CLERK

# 975

THIS DEED OF CONVEYANCE, made and entered into on this the 29th day of November, One Thousand Nine Hundred Sixty (1960), A. D., by and between THADDEUS EARL MARCUM and his wife, OZALENE MARCUM, of the village of Johnstown, State of Ohio, parties of the first part and GRANTORS, and ESPEN LOWE and IMOGENE MARCUM LOWE, his wife, of the unincorporated village of Breeden, Mingo County, West Virginia, for and during their joint lives, and upon the death of either of them to the survivor forever, parties of the second part and GRANTEES;

225

W-I-T-N-E-S-S-E-T-H: -