TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

Closing Date: September 29, 1998

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TRANSCRIPT OF PROCEEDINGS

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The closing of the sale of the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A and Series 1998 B (the "Bonds"), will take place at the offices of the West Virginia Water Development Authority at 11:00 a.m. prevailing time on September 29, 1997. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.

CHASFS3:129664

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 16 ARTICLE 13 OF THE WEST VIRGINIA CODE AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this Twenty-eighth *day of* September *19* 98

Secretary of State

sanitary district, said county court shall enter an appropriate order as hereinbefore provided, and such additional territory shall thenceforth be deemed an integral part of such sanitary district. (1933, Ex. Sess., c. 24, § 13.)

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

§ 16-12-14. Disconnection of territory from sanitary district.

Any contiguous territory located within the boundaries of any sanitary district organized under this article, and upon the border of such sanitary district, may become disconnected from such sanitary district in the manner following, to wit: Ten percent or more of the legal voters resident in the territory sought to be disconnected from such sanitary district may petition the county court [county commission] of the county in which the original petition for the organization of said sanitary district was filed, to cause the question of such disconnection to be submitted to the legal voters of such territory whether such territory shall be disconnected. Said petition shall be addressed to the county court of the county in which the original petition for the formation of such sanitary district was filed and shall contain a definite description of the boundaries of such territory to be disconnected and recite as a fact, that there is no bonded indebtedness of such sanitary district incurred while such territory to be disconnected was a part of such sanitary district and that such territory to be disconnected is not, at the time of the filing of such petition, and will not be, either benefited or served by any work or improvement either then existing or then authorized by said sanitary district. Upon filing such petition in the office of the county clerk of the county in which the original petition for the formation of such sanitary district has been filed it shall be the duty of the county court of the county in which the original petition for the formation of such sanitary district was filed, to consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one [§ 16-12-1] of this article. If any part of the territory proposed to be disconnected is situated in another county or counties other than that county in which the original petition was filed, then it shall be the duty of the said county court of the county in which the original petition was filed to call to its assistance the county courts of counties in which portions of such territory proposed to be disconnected is situated; such county courts shall constitute themselves a board of commissioners, and after electing a presiding officer from among themselves, shall consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory to be disconnected, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one of this article: Provided, however, That it shall be the duty of the county

court or the board of commissioners to deny the prayer of the petition for the disconnecting of any territory from the original sanitary district, if the material allegations therein contained are not founded in fact.

Notice shall be given by the county court of the time and place, when and where all persons interested will be heard substantially as provided in section one [§ 16-12-1] of this article. The conduct of the hearing and the manner of conducting the subsequent election on the question whether such territory shall become disconnected and the issuance, reception, return and canvassing of the ballots shall be, as nearly as possible, in accordance with the provisions of section one of this article. The ballots for the election provided for in this section shall be substantially as follows, to wit:

☐ For disconnection from sanitary district.

☐ Against disconnection from sanitary district.

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

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

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
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16-13-24. Article to be construed liberally.

Editor's notes. — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

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

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

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

Conflict of laws. — There is no conflict between this article, authorizing a city to incur expenses which are to be payable solely from the proceeds of revenue bonds, and the general statutory limitations on the expenditure of money and incurring of obligations with respect to funds produced by tax levies. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

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

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

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

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

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

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

Use of territory in adjoining state authorized. — By this section and § 16-13-22 the legislature intended, insofar as it could, to confer upon such municipalities as might find its exercise convenient, the right to make necessary and appropriate arrangements for the disposal of their sewage, even where that course involved the use of territory in an adjoining state. Bernard v. City of Bluefield, 117 W. Va. 556, 186 S.E. 298 (1936).

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

Cited in City of Beckley v. Craighead, 125 W. Va. 484, 24 S.E.2d 908 (1943); Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

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

The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen [§ 16-13-18] of this article. The term "works" as used in this article shall be construed to mean and include a works for the collection and/or treatment, purification and

disposal of sewage, in its entirety or any integral part thereof. The term "municipality" as used in this article shall be construed to mean any municipal corporation, incorporated city, town, village or sanitary district in the State of West Virginia. The term "governing body" as used in this article shall be construed to mean the mayor and council or other legally constituted governing body of any municipality. The term "board" when hereinafter used in this article shall be construed to mean the sanitary board as set up in section eighteen of this article. (1933, Ex. Sess., c. 25, § 2.)

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

Cited in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957); Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

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

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

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

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

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

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

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

Advances. — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sanitary board in accordance with the provisions of §§ 16-13-1, 16-13-18 and this section. The sanitary board is an agency of the city. This article merely requires that the construction and maintenance of the project be under the supervision and control of the sanitary board. A method is provided whereby the sanitary board may meet its own necessary preliminary expenses; but the city, in the early stages of the project, during that period in which the city has not even decided to go ahead with the work, and when there is no sanitary board in existence, is not prevented by any provision in the article from obtaining advances for plan preparation by any procedure which it may see fit to adopt. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

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

Repayment. — A municipality is authorized to incur obligations for the purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from the proceeds of revenue bonds, and not in any way from tax levies. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

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

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

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

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

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

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

date of publication of such abstract and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto. (1933, Ex. Sess., c. 25, § 6; 1967, c. 105; 1981, 1st Ex. Sess., c. 2.)

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

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

§ 16-13-8. Cost of works.

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises

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

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

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

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

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

Cross references. — See notes to § 16-13-8.

Applicability. — The provisions of this article become a part of the contract between the municipality and the bondholders as effectually as if written verbatim in the bonds. The bondholders are bound by their contract in this instance just as firmly as in any other legal contract. Consequently, the bonds do not create a corporate indebtedness of the municipality. Brewer v. City of Point Pleasant, 114 W. Va. 572, 172 S.E. 717 (1934); United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Contracts between municipalities. — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town could enter into a contract whereby the city agreed to construct a sewage disposal facility and the town agreed to contribute to the cost of the construction of the facility in return for the right to use the facility, and the fact that the town was unable to sell revenue bonds because it was not allowed to have part ownership in the treatment plant or interceptor sewers did not relieve the town of its contractual obligation when the city offered to buy the revenue bonds issued by the town. Since the contracts were authorized by statute and were thus not ultra vires, even if the contracts were not formally approved by ordinance, the municipalities were estopped from asserting any invalidity of the contracts on such ground. City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

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

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

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

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

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

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

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

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

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

applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

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

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

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

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

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by

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

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

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the

sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, however, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty days after same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. The board collecting such charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities to any delinquent user of either until all delinquent charges for both water facilities and sewer facilities, including reasonable

interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105.)

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

Applicability. — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the district court implicitly rejected the commission's interpretation. City of Charleston v. Public Serv. Comm'n, 57 F.3d 385 (4th Cir. 1995), cert. denied, — U.S. —, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

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

Jurisdiction. — The fact that this section speaks of the enforcement of the lien in a "civil action" should not be construed as placing that jurisdiction in our courts of law simply because the word "action," strictly applied, does not usually refer to chancery practice. City of Beckley v. Craighead, 125 W. Va. 484, 24 S.E.2d 908 (1943).

Municipal sewer system is subject to jurisdiction of public service commission, so municipality is required to file its rates with the commission for approval in accordance with § 24-2-1 et seq. 45 Op. Att'y Gen. 642 (1954).

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

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

Cited in Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

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

The municipality shall be subject to the same charges and rates established as hereinbefore provided, or to charges and rates established in harmony therewith, for service rendered the municipality, and shall pay such rates or charges when due from corporate funds and the same shall be deemed to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 17.)

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

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

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing sewage works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the

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

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

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

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

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

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

Consulting engineer. — Member of city council may not serve as consulting engineer to the sanitary board on city sewer project. 49 Op. Att'y Gen. 60 (1961).

Extension of service. — A public utility is under a duty to make reasonable extensions of its services in accordance with its franchise and

charter obligations and the needs of the inhabitants within the territory covered by its franchise; and a public service commission may, where its action is not unlawful, arbitrary, or capricious, order an extension of service for the inhabitants of such territory. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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

In conferring such power and authority upon a municipality by this article, the legislature did not create, or intend to create, any repugnancy or inconsistency between the provisions of this article and the pertinent provisions of chapter 24, or to repeal any of those provisions of that chapter. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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

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

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

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

Editor's notes. — The phrase "justice of the peace" and the word "justice," when used in a context meaning "justice of the peace," are construed to mean "magistrate." See § 50-1-17 and W. Va. Const., art. VIII, § 15.

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

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

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

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

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

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

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture. (1933, Ex. Sess., c. 25, § 21.)

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

As to receivers, see Rule 66.

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

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

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

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

Any municipality is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues

of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

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

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

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

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

§ 16-13-22c. Refunding bonds.

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

§ 16-13-22d. Subordination of bonds.

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust

indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1949, c. 93.)

§ 16-13-22e. Operating contract.

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution authorizing the issuance of bonds hereunder, or in any trust indenture, securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1955, c. 132.)

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

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

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

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

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

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

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least

sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

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

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such sewerage system, between bonds payable from such revenues;

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

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

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

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

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

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

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article. (1933, Ex. Sess., c. 25, § 23.)

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

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

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system; and the governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the

proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal bond commission by expending and paying said costs and expenses of construction and operation in the manner as provided by said ordinance; and after the completion of the construction such rates or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works. No such rates or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing the rates or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required. If any rate or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality. Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in

compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

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

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

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

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.
16-13A-1. Legislative findings.
16-13A-1a. Jurisdiction of the public service commission.
16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
16-13A-1c. General purpose of districts.
16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
16-13A-3a. Removal of members of public service board.
16-13A-4. Board chairman; members' compensation; procedure; district name.
16-13A-5. General manager of board.
16-13A-6. Employees of board.
16-13A-7. Acquisition and operation of district properties.
16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-9a. Limitations with respect to foreclosure.
16-13A-10. Budget.
16-13A-11. Accounts; audit.
16-13A-12. Disbursement of district funds.
16-13A-13. Revenue bonds.
16-13A-14. Items included in cost of properties.
16-13A-15. Bonds may be secured by trust indenture.
16-13A-16. Sinking fund for revenue bonds.
16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
16-13A-18. Operating contracts.
16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.
16-13A-19. Statutory mortgage lien created; foreclosure thereof.
16-13A-20. Refunding revenue bonds.
16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
16-13A-23. Validation of acts and proceedings of public service boards.
16-13A-24. Acceptance of loans, grants or temporary advances.
16-13A-25. Borrowing and bond issuance; procedure.

Editor's notes. — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

Textbooks. — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

Constitutionality. — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Purpose. — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public utilities. — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

Cited in Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am., 152 W. Va. 252, 162 S.E.2d 189 (1968); State v. Neary, 179 W. Va. 115, 365 S.E.2d 395 (1987); McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist., 485 S.E.2d 434 (W. Va. 1997).

§ 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 22C ARTICLE 2 OF THE WEST VIRGINIA CODE AND CHAPTER 22C ARTICLE 2 OF THE 1998 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this

Twenty-eighth *day of*

September *19* 98

Ken Hechler

Secretary of State

§ 22C-1-25. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed. (1994, c. 61.)

§ 22C-1-26. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents. (1994, c. 61.)

§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed two hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any such refunding bonds or notes, shall be excluded. (1994, c. 61.)

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.
22C-2-1. Definitions.
22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C-2-4. Annual audit.
22C-2-5. Collection of money due to the fund.
22C-2-6. State construction grants program established; special fund.
22C-2-7. Environmental review of funded projects.
22C-2-8. Conflicting provisions.

Editor's notes. — The Water Pollution Control Revolving Fund Act was formerly compiled in c. 20, art. 5I.

§ 22C-2-1. Definitions.

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

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

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating thereto.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local government" means any county, city, town, municipal corporation, authority, district, public service district, commission or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local government and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law. (1994, c. 61.)

§ 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws. (1994, c. 61.)

§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local governments and establish the interest rates and repayment terms of such loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and

consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of such depository to which moneys of the fund are paid shall act as trustee of such moneys and shall hold and apply them solely for the purposes for which said moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61.)

§ 22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three [§ 22C-2-3(a)] of this article. (1994, c. 61.)

§ 22C-2-5. Collection of money due to the fund.

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

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

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local government, all of the rights, powers and remedies of the local government with respect to the project or which may be conferred upon the local government by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local government pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local government of all of

the terms and conditions of the loan agreement between the state and that local government including:

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

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

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

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61.)

§ 22C-2-6. State construction grants program established; special fund.

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three [§ 22C-2-3(b)] of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section. (1994, c. 61.)

§ 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to implement the environmental review of funded projects: Provided, That said rules shall be consistent with the rules and regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local government, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse

impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of such projects under the federal clean water act, as amended. (1994, c. 61.)

§ 22C-2-8. Conflicting provisions.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1994, c. 61.)

ARTICLE 3.

SOLID WASTE MANAGEMENT BOARD.

Sec.
22C-3-1. Short title.
22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
22C-3-3. Definitions.
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(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project. (1994, c. 61; 1995, c. 252.)

Effect of amendment of 1995. — The amendment, in the first sentence of the introductory paragraph, substituted "the financing" for "a loan" preceding "for a new water development project," inserted "regardless of the source of the financing for the new project" preceding the proviso, substituted "the aggregate amount of the refinancing of an existing project and the financing of a new project" for "the loan to the governmental agency"; and made stylistic changes throughout.

Quoted in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

Authority. — This section authorizes the water development authority to directly impose on a public service district "in its own name and for its own benefit service charges determined by it to be necessary" when the public service district defaults on a loan made by the water development authority to the public service district; however, the water development authority's power to impose such service charges upon the public service district which operates a public utility is subject to the regulatory review and approval of the public service commission pursuant to § 24-2-1. State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 22C-1-12. Legal remedies of bondholders and trustees.

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 22C-1-18. Water development bonds lawful investments.

Editor's notes. — Former § 12-6-9, referred to in this section, concerned loans to the state, purpose for which moneys transferred could be disbursed and expended, terms and conditions for repayment, and the creation of a special account in the state treasury, and was repealed by Acts 1996, c. 258. For new law see § 44-6B-1 et seq.

§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed three hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded. (1994, c. 61; 1995, c. 252.)

Effect of amendment of 1995. — The amendment substituted "three hundred million dollars" for "two hundred million dollars"; and deleted "such" preceding "refunding bonds."

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.
22C-2-1. Definitions.
22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C-2-5. Collection of money due to the fund.
22C-2-7. Environmental review of funded projects.

§ 22C-2-1. Definitions.

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

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

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "entity" for "government" throughout the section; in (b)(3), substituted "on the land or buildings" for "thereon" and "the land" for "such land"; in (c), substituted "to the acts" for "thereto"; and, in (e), inserted "banking institution" following "commission."

§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this

article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

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

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

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "entities" for "governments" throughout the section; in (b) and (d), inserted "legislative" preceding "rules" and "article three" preceding "chapter twenty-nine-a"; and made stylistic changes.

§ 22C-2-5. Collection of money due to the fund.

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

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

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

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

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

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

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

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "government" for "entity" throughout; and made minor stylistic changes.

§ 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment, in (a), inserted "legislative" preceding "rules in accordance" and "article three" preceding "chapter twenty-nine-a," substituted "the rules" for "said rules," and deleted "rules and" preceding "regulations promulgated"; and, in (b), substituted "entity" for "government" and "the projects" for "such projects."

ARTICLE 3.

SOLID WASTE MANAGEMENT BOARD.

§ 22C-3-18. Solid waste disposal revenue bonds lawful investments.

Editor's notes. — Former § 12-6-9, referred to in this section, concerned loans to the state, purpose for which moneys transferred could be disbursed and expended, terms and conditions for repayment, and the creation of a special account in the state treasury, and was repealed by Acts 1996, c. 258. For new law see § 44-6B-1 et seq.

ARTICLE 4.

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

Sec.
22C-4-1. Legislative findings and purposes.
22C-4-2. Definitions.
22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.
22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.
22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.
22C-4-26. Approval of new Class A facilities by solid waste authorities.
22C-4-27. Approval of conversion from Class B facility to Class A facility.
22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

§ 22C-4-1. Legislative findings and purposes.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 31 ARTICLE 15A OF THE WEST VIRGINIA CODE AND CHAPTER 31 ARTICLE 15A OF THE 1998 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this

Twenty-eighth *day of*

September *19* 98

Secretary of State

between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary. (1989, c. 54.)

§ 31-15-29. Audits.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. (1989, c. 54.)

§ 31-15-30. Projects not to be considered public improvements.

No project, enterprise or business facility which conducts as its primary activity a manufacturing process or other nongovernmental or nonpublic activity may be deemed to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code. (1989, c. 54.)

§ 31-15-31. Foreign trade zones; authority approval.

Any public corporation located in the state is hereby authorized to apply for, develop, maintain and operate a foreign trade zone in the state pursuant to and in accordance with all applicable provisions of federal law: Provided, That any public corporation desiring to apply for or develop a foreign trade zone must first receive the approval of the authority. (1989, c. 54.)

§ 31-15-32. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable. (1989, c. 54.)

§ 31-15-33. Construction.

The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three [§ 31-15-3] of this article. (1989, c. 54.)

ARTICLE 15A.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

Sec.
31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-4. Development of guidelines and preliminary application for funding assistance.
31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-12. Additional powers of water development authority.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-14. Termination or dissolution.
31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
31-15A-16. Dedication of severance tax proceeds.

§ 31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act." (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-2. Definitions.

For purposes of this article:

(a) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(b) "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any

buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(c) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(d) "Division of environmental protection" means the division of environmental protection established under article one [§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(e) "Division of health" means the division of health created in article one [§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Economic development authority" means the economic development authority established under article fifteen [§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(g) "Emergency project" means a project which the council has determined (i) is essential to the immediate economic development of an area of the state and (ii) will not likely be developed in that area if construction of the project is not commenced immediately;

(h) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects;

(i) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(j) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(k) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(*l*) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(m) "Project" means any waste water facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(n) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(o) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(p) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(q) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a waste water facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(r) "State development office" means the West Virginia development office established under article two [§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(s) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commis-

sion, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(t) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(u) "Water development authority" means the West Virginia water development authority established under article five-c [§ 20-5C-1 et seq., repealed], chapter twenty of this code, or any successor to all or any substantial part of its powers and duties; and

(v) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26.)

Editor's notes. — Former § 20-5C-1 et seq., referred to in (u), was repealed by Acts 1994, c. 61. For provisions similar to former § 20-5C-1 et seq., see § 22C-1-1 et seq.

§ 31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen [§ 31-15-1 et seq.], chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(f) The water development authority shall provide office space for the council, and each governmental agency represented on the council shall provide staff support for the council in the manner determined by the council from time to time.

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (a), rewrote the first sentence and substituted "is" for "shall be" in the second sentence; in (b), substituted "eleven members" for "nine members" following "shall consist of," substituted

"four members" for "two members" preceding "representing the general public", added the provisos at the end of the first sentence, and made minor punctuation changes; substituted "six members" for "five members" in the second sentence in (c); and rewrote (d), (e), and (g).

§ 31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six [§ 31-15A-6], of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or

project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council's recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three year period after the initial assessment and inventory is completed.

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not

only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office; a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines.

After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or waste water facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven [§ 24-2-11], article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant

to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (k), section two [§ 31-15A-2(k)] of this article and to include a water facility project as defined in subsection (m), section two [§ 31-15A-2(m)] of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subdivision (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues

received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four [§ 31-15B-4] of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b [§ 31-15B-1 et seq.] of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen [§ 31-18-1 et seq.], chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development

authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration [office abolished], where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Editor's notes. — The bracketed words were inserted by the editor. The office of the commissioner of finance and administration was abolished, and the duties of that office were transferred to the secretary of administration. See § 5A-1-2.

Effect of amendment of 1995. — The amendment, effective March 10, 1995, rewrote (a); in (b), substituted "shall" for "may" after "infrastructure fund" and added the proviso in the first sentence, and inserted the present second sentence; inserted "and article fifteen-b

of this chapter" in the first sentence of (c); substituted "the" for "such" preceding "loan guarantee" in (d)(2); and added (f) and (g).

§ 31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall

adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) The council shall affix a mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. The mandatory minimum utility rate shall be established by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The rule shall provide that the mandatory minimum utility rate be based upon a uniform statewide percentage of the median household income in a particular geographic area which is rationally related to the geographic area of the project to be served.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the pre-application would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the pre-application process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total pre-application cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the pre-application process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (a), divided the former first sentence into the present first two sentences, added the language beginning "any moneys disbursed" at the end of the first sentence, substituted "project sponsor" for "profit sponsor" in the proviso in the present second sentence, substituted "on preliminary application forms" for "or projects from time to time, and shall be submitted in the manner and on the preliminary application form" in the third sentence, and added the last sentence; added the proviso and made minor punctuation changes in the first sentence in (b); and added (c), (d), and (e).

Editor's notes. — Section 501 of the Internal Revenue Code of 1986, referred to in (a), is codified at 26 U.S.C. § 501.

§ 31-15A-11. Reservation of funds for projects and infrastructure projects.

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (m), section two [§ 31-15A-2(m)] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (k), section two [§ 31-15A-2(k)] of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-12. Additional powers of water development authority.

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

No part of the infrastructure fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-14. Termination or dissolution.

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code, as a result of such financing.

(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor

without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-16. Dedication of severance tax proceeds.

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§ 11-13A-1 et seq.], chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited: Provided, however, That the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a of said article thirteen-a [§ 11-13A-20a] shall remain dedicated for the purposes set forth in said section twenty-a.

(c) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (b), inserted "general obligation debt service" prior to "fund created pursuant to" and substituted "section three, article fifteen-b of this chapter" for "section nine of this article"; and added (c).

ARTICLE 15B.

INFRASTRUCTURE BONDS.

Sec.
31-15B-1. Definitions.
31-15B-2. Infrastructure general obligation bonds; amount; when may issue.
31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.
31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.
31-15B-5. Covenants of state.
31-15B-6. Sale by governor; minimum price.
31-15B-7. Prohibition on funds inuring to the benefit of or being distributable to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.
31-15B-8. Infrastructure bonds lawful investments.
31-15B-9. Refunding bonds.
31-15B-10. Termination or dissolution.
31-15B-11. Treasurer to determine financial advisor.
31-15B-12. Governor to determine bond counsel.
31-15B-13. Approval and payment of all necessary expenses.

§ 31-15B-1. Definitions.

For purposes of this article and article fifteen-a [§ 31-15A-1 et seq.] of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3], article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two [§ 31-15B-2] of this article;

(d) "Water development authority" means the West Virginia water development authority established under article one [§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties. (1995, c. 130.)

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which sixteen million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county,

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ARTICLE 15A.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

Sec.
31-15A-2. Definitions.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
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31-15A-24. Infrastructure revenue bonds exempt from taxation.

§ 31-15A-1. Short title.

Cited in State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996).

§ 31-15A-2. Definitions.

For purposes of this article:

(a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other obligation issued by the water development authority pursuant to this article, including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such bonds.

(b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(d) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(e) "Division of environmental protection" means the division of environmental protection established under article one [§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one [§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen [§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and (2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(*l*) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(n) "Need of the project sponsors" means there is a public need for a project. The council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need exists for projects in that county.

(o) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(p) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(q) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(r) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two [§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(u) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(v) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one [§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties; and

(x) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, inserted the present (a), and redesignated the former (a) through (*l*) as (b) through (m); inserted (n), and redesignated the former (m) through (v) as (o) through (x); in (w), substituted "article one, chapter twenty-two-c of this code" for "article five-c, chapter twenty of this code"; and made stylistic changes.

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the

emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven, article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven [§ 24-2-11], article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (*l*), section two [§ 31-15A-2(*l*)] of this article and to include a water facility project as defined in subsection (n), section two [§ 31-15A-2(n)] of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, in (d), in the first sentence, substituted "subsection (*l*)" for "subsection (k)," "subsection (n)" for "subsection (m),"and "subsection (a)" for "subdivision (a)"; and made a stylistic change.

§ 31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance shall be provided by the council on a pro rata basis divided equally among the regions of the state as delineated in accordance with article twenty-five [§ 8-25-1 et seq.], chapter eight of this code. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually.

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, added (f); rewrote (c); and made a stylistic change.

§ 31-15A-11. Reservation of funds for projects and infrastructure projects.

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two [§ 31-15A-2(n)] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (*l*), section two [§ 31-15A-2(*l*)] of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, in the first sentence, substituted "subsection (n)" for "subsection (m)," and in the second sentence, substituted "subsection (*l*)" for "subsection (k)."

§ 31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, inserted "or the West Virginia infrastructure revenue debt service fund."

§ 31-15A-16. Dedication of severance tax proceeds.

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§ 11-13A-1 et seq.], chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the

acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a [§ 31-13A-1 et seq.] of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a [§ 11-13A-20a] of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b [§ 31-15B-1 et seq.] of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, inserted (c), and redesignated the former (c) as (d); and in (b), rewrote the proviso.

§ 31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the

projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund that are due the water development authority on all outstanding loans previously made by the water development authority pursuant to the provisions of this article.

(b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of making loans and loan guarantees and other forms of financial assistance to sponsors of one or more projects or infrastructure projects, and shall be deposited in one or more special accounts with the trustee under the trust agreement securing such bonds and disbursed from time to time for projects or infrastructure projects in accordance with this article: Provided, That notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (*l*), section two [§ 31-15A-2(*l*)], of this article.

(c) The water development authority may not authorize the disbursement of any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten [§ 31-15A-10] of this article.

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure Revenue Debt Service Fund," into which shall be transferred solely from the loan repayments deposited in the infrastructure fund the amounts certified by the director of the water development authority as necessary to pay the principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements, subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue bonds authorized by this article: Provided, That amounts on deposit in the fund may be used to establish or maintain reserves created for the purposes of securing such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is made, and the West Virginia infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the water development authority irrespective of whether the parties have notice thereof.

(e) Except as may otherwise be expressly provided in this article or by resolution of the water development authority, every issue of infrastructure revenue bonds shall be special obligations of the water development authority payable solely from amounts in the West Virginia infrastructure revenue debt service fund, and the reserves created for this purpose by the water development authority, without preference or priority among the bonds regardless of when issued, subject only to any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable instruments.

(f) Infrastructure revenue bonds shall be authorized by resolution of the water development authority. These bonds shall bear such dates and shall mature at such times, in case of any note or renewal thereof not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the registration privileges, shall be payable in the medium and place of payment, and shall be subject to the terms of redemption as the water development authority may authorize. Infrastructure revenue bonds may be sold by the water development authority at public or private sale at the price the water development authority determines in consultation with the council. Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the water development authority, either or both of whom may use a facsimile signature. The official seal of the water development authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the water development authority. If any officer whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had remained in office until such delivery, and if the seal of the water development authority has been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be sufficient for all purposes.

(g) Any resolution authorizing any infrastructure revenue bonds may contain provisions, subject to any agreement with bondholders or noteholders which may then exist, which agreements shall be part of the contract with the holder thereof, with respect to the pledge of or other use and disposition of amounts in the infrastructure revenue debt service fund; the setting aside of reserve funds; the disposition of any assets of the water development authority; limitations on the purpose to which the proceeds of sale of bonds may be applied; the authorization of notes issued in anticipation of the issuance of bonds; an agreement of the water development authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds and the renewal of outstanding notes; the procedures, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; and any other matter which in any way affects the security for or protection of the bonds.

(h) In the event that the sum of all reserves pledged to the payment of the bonds is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of the bonds, the chairman or the director of the water development authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the water development authority to be pledged for payment of such bonds: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

(i) Neither the officers or board members of the water development authority, nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.

(a) Any infrastructure revenue bonds issued by the water development authority under this article shall be secured by a trust agreement between the water development authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within this state.

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen [§ 31-15A-17] of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of the infrastructure debt service fund shall furnish such indemnifying bonds or pledge securities as are required by the water development authority. The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement may contain such other provisions as the water development authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a project or infrastructure project. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.

Any holder of infrastructure revenue bonds issued pursuant to this article and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the water development authority or any officer thereof. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-20. Infrastructure revenue bonds lawful investments.

All infrastructure revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

(a) The water development authority, subject to such agreements with noteholders or bondholders as may then exist, shall have the power, from any funds available therefor, to purchase or redeem infrastructure revenue bonds of the water development authority.

(b) If the infrastructure revenue bonds are then redeemable, the price of the purchase shall not exceed the redemption price then applicable, plus accrued interest to the next interest payment date thereon. If the infrastructure revenue bonds are not then redeemable, the price of the purchase shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption, plus accrued interest to such date. Upon purchase or redemption, the bonds shall be canceled. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-22. Refunding revenue bonds.

Any infrastructure revenue bonds issued pursuant to the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the water development authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide additional funds for the water development authority to accomplish the purpose of this article, and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure revenue bonds to be refunded shall have then matured or shall thereafter mature: Provided, That the holders of any infrastructure revenue bonds so to be refunded shall not be compelled without their consent to surrender their infrastructure revenue bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding revenue bonds issued pursuant to this article shall be payable from the West Virginia infrastructure revenue debt service fund, and shall be subject to the provisions contained in section seventeen [§ 31-15A-17] of this article, and shall be secured in accordance with the provisions of sections seventeen and eighteen [§§ 31-15A-17 and 31-15A-18] of this article. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.

Infrastructure revenue bonds issued pursuant to the provisions of this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. The holders or owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds shall be payable solely from the revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

§ 31-15A-24. Infrastructure revenue bonds exempt from taxation.

The exercise of the powers granted to the water development authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is for a public purpose. As the construction, acquisition, repair or renovation of projects or infrastructure projects will constitute the performance of essential governmental functions, the water development authority shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by the water development authority or upon the income therefrom. The infrastructure revenue bonds and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes. (1998, c. 180.)

Effective dates. — Acts 1998, c. 180, provided that the act take effect ninety days from passage (June 12, 1998).

ARTICLE 15B.

INFRASTRUCTURE BONDS.

Sec.
31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such

time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which twenty-four million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which fact shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state. (1995, c. 130; 1998, c. 180.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, in the second paragraph, substituted "twenty-four million dollars" for "sixteen million dollars."

ARTICLE 16.

WEST VIRGINIA STEEL FUTURES PROGRAM.

Sec.
31-16-1. Legislative intent; purpose and administration.
31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection of officers.
31-16-3. General powers of the commission.
31-16-4. Steel futures program.
31-16-5. Continuation of program.

§ 31-16-1. Legislative intent; purpose and administration.

The Legislature recognizes that the steel industry plays a significant role in West Virginia's economy, and the industry's survival and success is of significant importance to the residents and the tax base of the state. Because of this significant economic role, there is hereby created in the bureau of commerce a steel advisory commission and a new program entitled "The Steel Futures Program". The purpose of the commission and the program is to preserve and improve the economy of the state by promoting employment and increased productivity, thereby ensuring continued economic development consistent with these goals, and to maintain a high standard of living for the residents of the state. The commission, through the steel futures program, may supplement any other enterprise assistance program administered by the West Virginia development office. The steel futures program shall be administered so as to provide financial and technical assistance as provided in this article to increase the competitiveness of existing steel and steel-related industries within the state and to encourage the establishment and development of new steel and steel-related industries within the state. (1993, c. 128; 1997, c. 169.)

Effect of amendment of 1997. — The amendment, in the second sentence, substituted "bureau of commerce" for "West Virginia department of commerce, labor and environ-

IN THE MATTER OF TOWN OF GILBERT:

1111

INCORPORATION:

On the 14th day of January, 1918, that being th first day of the present (regular) term of this court, Lee Ellis, Sr., H. G. Ferrell and Erastus Ellis, by Goodykoontz and Scherr, Esquires, their attorenys, appeared and presented in open court their petition praying the certificate of incorporation of tha bove named Town, and prseneted 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 bof 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 petitio 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, surevy and notice is included within any incorprated 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 sepcified 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 duly 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 from 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 Skillett Fork just above the mouth of Perry's Hollow; S. 16. 25' E. 7220 feet crossing Guyandott 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 sepcified in said notice and certificate, to-wit: Town of Gilgert.

FOURTH: That Robert Allen, Frank Ryan and Walter Ellis, three legally qualified voters within the territory embraced within said Town, and who are hereby appointed for the purpose, shll 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

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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 N. & W. 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 effected 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 rising of this Court.

ORDERED AND ENTERED on this 27th day of February, 1973.

PRESIDENT

COMMISSIONER

COMMISSIONER

ATTEST:

CLERK

"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.

News Media	Address
Williamson Daily News	100 East 3rd Avenue Williamson, WV 25661
WBTH-AM	P. O. Box 261 Williamson, WV 25661
WXCC-FM	P. O. Box 261 Williamson, WV 25661
WCHS-TV	911 5th Avenue Huntington, WV 25701
WSAZ-TV	645 5th Avenue Huntington, WV 25701
WOWK-TV	P. O. Box 13 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 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 begiven to the public and news media by posting at the place and distributing to the new 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, rlace 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

Recorder

[SEAL]

ABB04E1E

FIRST READING Monday 2-21-94

OATH OF OFFICE

I, Richard N. Ellis, DO HEREBY SOLEMENLY SWEAR OR PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF MAYOR, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL, KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED Richard N. Ellis

WITNESS V. Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Notary Public, COUNCIL, TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 13 DAY OF July, 1998

Vivian Carter

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Vivian Smith-Carter
P.O. Box 188
Gilbert, WV 25621
My Comm. Exp. May 19, 2003

THE TOWN OF GILBERT

P. O. BOX 188

GILBERT, WEST VIRGINIA 25621

(304) 664-9625

OATH OF OFFICE

I, Eddie Perry, DO HEREBY SOLEMENLY SWEAR OR PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF RECORDER, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL, KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED Eddie Perry

WITNESS Vivian Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Vivian Smith-Carter, COUNCIL, TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 26 DAY OF Aug, 1998

Vivian Smith-Carter

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Vivian Smith-Carter
P.O. Box 188
Gilbert, WV 25621
My Comm. Exp. May 12, 2003

We're Naturally Resourceful!

The Town of
Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188
(304) 664-9625

OATH OF OFFICE

I, Randy Livingood, DO HEREBY SOLEMNLY SWEAR OF PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF Councilman, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL, KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED _____

WITNESS Williams Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Tim Rutledge, MAYOR TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 1st DAY OF July, 1997.

Tim Rutledge

MAYOR

We're Naturally Resourceful!

The Town of
Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188
(304) 664-9625

OATH OF OFFICE

I, Wendell L. Hatfield, Sr., DO HERBY SOLEMNLY SWEAR OF PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA. THE THE CONSTITUTION OF THE STATE OF WEST VIRGINIA, AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF COUNCILMAN, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

Wendell L. Hatfield Sr.
SIGNED

Richard N. Ellis
WITNESS

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Tim Rutledge MAYOR, TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINI ON THIS 13th DAY OF Oct. 1997.

Tim Rutledge
MAYOR

The Town of
Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188
(304) 664-9625

We're Naturally Resourceful!

OATH OF OFFICE

I, Robert Billups, DO HEREBY SOLEMNLY SWEAR OF PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF Council, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL, KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED Robert E. Billups

WITNESS Miriam Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Tim Rutledge, MAYOR TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 1st DAY OF July, 1997.

Tim Rutledge

MAYOR

We're Naturally Resourceful!

The Town of
Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188
(304) 664-9625

OATH OF OFFICE

I, Curtis Lester, DO HEREBY SOLEMNLY SWEAR OF PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF Council, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL,KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED Curtis A. Lester

WITNESS Miriam Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Tisa Rutledge, MAYOR TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 1st DAY OF July, 1997.

Tisa Rutledge

MAYOR

We're Naturally Resourceful!

The Town of
Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188
(304) 664-9625

OATH OF OFFICE

I, William D[illegible], DO HEREBY SOLEMNLY SWEAR OF PROMISE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE CONSTITUTION OF THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY DISCHARGE THE DUTIES OF Council, FOR THE TOWN OF GILBERT, STAFFORD DISTRICT, MINGO COUNTY, WEST VIRGINIA TO THE BEST OF MY ABILITY, SKILL,KNOWLEDGE AND JUDGEMENT, SO HELP ME GOD.

SIGNED William D[illegible]

WITNESS Vivian Carter

STATE OF WEST VIRGINIA
STAFFORD DISTRICT
COUNTY OF MINGO TO-WIT:

SWORN AND SUBSCRIBED TO BEFORE ME, Tim Rutledge, MAYOR TOWN OF GILBERT, STAFFORD DISTRICT, COUNTY OF MINGO, STATE OF WEST VIRGINIA, ON THIS 1st DAY OF July, 1997.

Tim Rutledge

MAYOR

TREATMENT BY THE TOWN OF GILBERT, WEST VIRGINIA

Notice is hereby given that the Town of Gilbert, West Virginia, functioning as a public utility heard a first reading of an ordinance on October 13, 1997, during a regular meeting of the council of the said Town, for the purpose of setting a tariff or rate, tolls and charges for the furnishing of sewage collection service to 454 customers in and near the Town of Gilbert in Mingo county, West Virginia. The proposed rates and charges will become effective on December 25, 1997 unless otherwise ordered by the Public Service Commission. The ordinance as read and considered by the Town of Gilbert on October 13, 1997, reads as follows:

CITY ORDINANCE

WHEREAS, the Town of Gilbert, Mingo County, West Virginia seeks to be in compliance with the State and Federal regulations regarding pollution control and sewage disposal; and

WHEREAS, IN ORDER FOR THE Town of Gilbert to achieve those objectives it mist construct a sanitary sewer system to provide sewer service to the Town of Gilbert and its environs; and

WHEREAS, it is necessary to establish rates and charges to finance the proposed sewer system and to support the sewer project once constructed.

NOW, THEREFORE, BE IT ORDAINED BY THE Council of the Town of Gilbert, West Virginia, that the following rates and charges be adopted for the purpose of financing the proposed sanitary sewer project and to support the sewer project once completed:

First 2,000 gals, 10.50/m gal. Over 2,000 gals. 8.98/m gal. Minimum monthly bills 21.00 per month.

The above tariff is net. On all accounts not paid in full within twenty days of the date of bill, ten percent (10%) will be added to the net amount shown. The delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

Service shall not be restored until all amounts in arrears, including penalties, plus the reconnection fee of $20.00 have been paid in full.

Prior to construction, there will be no charge for connection to the system. Subsequent to construction there shall be charge for connection of $150.00.

Service will be available for metered general, domestic, commercial and industrial uses.

This ordinance was read at the following council meetings:

First reading October 13, 1997.

Second reading: Nov. 10, 1997.

At the second reading the Ordinance was voted upon as follows:

Yes 5 No 0

The third reading of the Ordinance was therefore waived and the Ordinance was adopted and became effective on the 10 day of November 1997

The Town of Gilbert
Fourth Avenue
P. O. Box 812
Gilbert, West Virginia 25621
Phone number 304-664-9625

A copy of proposed rates is available for public inspection at the Office of the Secretary of the Public Service Commission at 201, Brooks Street p.o. box 812, Charleston, WV

The second and final reading of the said ordinance is scheduled to be heard by the Town of Gilbert during a regular meeting of the said council on the 10th day of November 1997, at the Town Hall located at 4th avenue in the Town of Gilbert, Mingo County, West Virginia at 6:00 p.m.

By: TIM RUTLEDGE
MAYOR, Town of Gilbert
Mingo County, West Virginia

Robert Billups

Introduced in Council
3/15/94

Introduced by
Councilman Curtis Lester

Passed by Council
3-24-95

"Ordinance placing the custody, administration, operation and maintenance of the sewerage system of the Town of Gilbert, West Virginia, under the supervision and control of a sanitary board; creating such sanitary board of said Town; providing for the terms of office of and compensation for the members of such sanitary board; and making other provisions with regard to such sanitary board."

Be It Ordained by the Town Council of the Town of Gilbert, West Virginia:

ARTICLE I

Statutory Authority and Findings

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Article 13 of Chapter 16 of the Code of West Virginia of 1931, as amended (the "Act"), particularly Section 18 thereof, and other applicable provisions of law.

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

(A) The Town of Gilbert, West Virginia (the "Town"), contemplates the construction and acquisition of certain improvements, extensions, betterments and additions (the "Project") to its municipal sewerage system (the existing collection lines together with the Project and any further extensions, improvements, betterments and addition thereto, the "System") and the permanent financing of such construction and acquisition not otherwise provided by the issuance of sewerage system revenue bonds pursuant to the Act.

(B) In accordance with Section 18 of the Act, the Council of the Town must provide by ordinance that the custody, administration, operation and maintenance of the System shall be under the supervision and control of a sanitary board.

(C) It is necessary and desirable for health, welfare and safety of the inhabitants of the Town that the System be

constructed and acquired pursuant to the provisions of the Act and, accordingly, that a sanitary board be created, appointed and given supervision and control of the System.

ARTICLE II

SANITARY BOARD

Section 2.01. System under Control and Supervision of Sanitary Board. The custody, administration, operation and maintenance of the System, including any further extensions, betterments or improvements to the System that may hereafter be acquired, shall be, and are hereby, placed under the supervision and control of the sanitary board created pursuant to Section 2.02 hereof. Said sanitary board shall have all the power and authority properly vested in it in accordance with the Act.

Section 2.02. Creation and Membership of Sanitary Board. There is hereby created a sanitary board of the Town (the "Sanitary Board"), composed of the mayor of the of the Town and two persons appointed by the Council of the Town, one of whom, during the period of construction of the Project or any extensions, betterments or improvements to the System must be a registered professional engineer. The engineer member of the Sanitary Board need not be a resident of the Town. After any such construction has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the Town, whether holding a paid or unpaid office, shall be eligible to appointment on the Sanitary Board until at least one year after the expiration of his or her term of public office.

Section 2.03. Terms of Office. The term of office of an appointed Sanitary Board member shall be three years; provided, however, the original appointees shall be appointed for terms of two and three years, respectively.

Section 2.04. Vacancy in Office. Any vacancy in the office of an appointed Sanitary Board member shall be filled for the unexpired term in the same manner as the original appointment.

Section 2.05. Organization of Sanitary Board. The mayor of the Town shall act as chairman of the Sanitary Board. The Sanitary Board shall elect a vice-chairman from its members and shall designate a secretary and treasurer, who need not be members of the Sanitary Board; provided, however, the secretary and treasurer may be one and the same person. The vice-chairman, secretary and treasurer shall hold office as such at the will of the Sanitary Board. The Sanitary Board shall have power to establish bylaws, rules and regulations for this own government.

Section 2.06. Compensation of Sanitary Board Members and Officers.

(A) The members of the Sanitary Board shall receive as compensation for their services $25.00 for each meeting of the Sanitary Board attended; provided, however, no member shall be compensated for any meeting that he or she does not attend. In addition to the compensation provided in the preceding sentence, the members of the Sanitary Board shall be entitled to payment for their reasonable expenses incurred in the performance of their respective duties.

(B) The secretary and the treasurer of the Sanitary Board shall receive no compensation for his or her respective services; provided that the secretary and treasurer or the secretary-treasurer, as the case may be, shall be entitled to payment for their or his or her reasonable expenses incurred in the performance of their respective or his or her duties.

(C) All compensation and reimbursement of expenses referred to in this section shall be paid solely from funds provided under the authority of the Act.

Section 2.07. Bonds. No bond shall be required for the members of the Sanitary Board; provided, however, that any withdrawal, disbursement, transfer or exchange of or any other transaction involving funds or other property of, or under the supervision and control of, the Sanitary Board shall require the signature at least of the treasurer of the Sanitary Board. Said treasurer of the Sanitary Board shall be bonded in the amount of $50,000 throughout his or her term as treasurer.

ARTICLE III

MISCELLANEOUS

Section 3.01. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 3.02. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extend of such conflict repealed.

Section 3.03. Effective Date. This Ordinance shall take effect immediately upon passage.

TOWN OF GILBERT

Mayor

[SEAL]

Recorder

First Reading: 3-15-94

Second Reading: 3-23-94

ABB04F21

OATH OF OFFICE

THE STATE OF WEST VIRGINIA, MINGO COUNTY, to wit:

I, William F Peak, having been duly appointed to the office of board member of the Sanitary Board of the Town of Gilbert, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance herein, to the best of my skill and judgment, so help me God.

Subscribed and sworn to before the undersigned this 17th day of August, 1998.

Vivian Smith-Carter
Notary Public

SEAL]

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Vivian Smith-Carter
P.O. Box 188
Gilbert, WV 25621
My Comm. Exp. May 19, 2003

28348

OATH OF OFFICE

THE STATE OF WEST VIRGINIA, MINGO COUNTY, to wit:

I, Richard N. Ellis, having been duly appointed to the office of board member of the Sanitary Board of the Town of Gilbert, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me God.

Richard N. Ellis

Subscribed and sworn to before the undersigned this 17th day of August, 1998.

Vivian Smith-Carter
Notary Public

SEAL]

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Vivian Smith-Carter
P.O. Box 188
Gilbert, WV 25621
My Comm. Exp. May 19, 2003

28348

OATH OF OFFICE

THE STATE OF WEST VIRGINIA, MINGO COUNTY, to wit:

I, LARRY D. MAUK, having been duly appointed to the office of board member of the Sanitary Board of the Town of Gilbert, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me God.

Larry D. Mauk

Subscribed and sworn to before the undersigned this 17th day of August, 1998.

Vivian Smith-Carter
Notary Public

[SEAL]

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Vivian Smith-Carter
P.O. Box 188
Gilbert, WV 25621
My Comm. Exp. May 19, 2003

128348

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

TO THE COUNCIL OF THE TOWN OF GILBERT, WEST VIRGINIA

Pursuant to the provisions of Section 5, Article 13, of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), the Sanitary Board (the "Board") of the Town of Gilbert, West Virginia (the "Town"), which was established pursuant to an ordinance passed by the Council of the Town (the "Council") on March 24, 1994 hereby petitions the Council to enact an ordinance, in substantially the form attached as Exhibit A hereto and incorporated herein by reference, which shall:

(a) Set forth a brief and general description of the proposed sewerage system of the Town (the "Project") to be acquired and constructed in accordance with the plans and specifications prepared and filed by Woolpert Consultants, the engineers chosen by the Town and the Sanitary Board (the "Consulting Engineers");

(b) Set forth the cost of the Project estimated as of the date hereof by the Consulting Engineers as $6,843,252.

(c) Order the construction and acquisition of the Project;

(d) Direct that the Town (i) issue one or more series of Sewerage System Revenue Bonds in the aggregate principal amount of not more than $2,500,000 to finance the costs of the acquisition and construction of the proposed sewerage collection and treatment system of the Town; (ii) establish interim construction financing in the amount of $750,000, consisting of a letter of credit agreement secured by a Note; (iii) define and prescribe the terms and provisions of the Bonds and the Note; (iv) provide for the rights and remedies of and security for the Registered Owners of the Bonds and the Note; and

(e) Contain such other provisions as may be necessary in the premises.

The Board respectfully represents to the Council that, during the acquisition and construction of the Project, one of the 2 persons appointed to the Board by the Council will be a registered professional engineer.

This petition was duly authorized at a meeting of the Sanitary Board duly called and held on the 17th day of August, 1998.

WITNESS our signatures on the 17th day of August, 1998.

THE SANITARY BOARD OF THE TOWN OF GILBERT, WEST VIRGINIA

By Richard N. Ellis
Mayor of the Town of Gilbert, as Chairman

By William F. Peck
Member

By _____
Member

CHASFS3:128109

EXHIBIT A

(See copy of Bond and Letter of Credit Ordinance)

MONDAY, AUG. 17, 1998

GILBERT TOWN COUNCIL MEETING

TIME BEGINNING – 6:10 P.M.

PRESENT ON THE SEWER BOARD – BILL PEAK AND RICHARD ELLIS

TOWN COUNCIL MEMBERS PRESENT CURTIS LESTER, RANDY LIVINGOOD AND WENDELL HATFIELD.

CURTIS LESTER OPENED THE MEETING WITH PRAYER.

MAYOR ELLIS CALLED MEETING TO ORDER.

RANDY LIVINGOOD MADE THE MOTION TO DISCUSS THE FINANCIAL STATEMENTS AND MINUTES OF THE PREVIOUS MEETING AT THE END OF THE MEETING. WENDELL HATFIELD SECONDED THE MOTION. ALL IN FAVOR.

WENDELL HATFIELD MADE THE MOTION TO RE-APPOOINT BILL PEAK AND LARRY MAUCK TO THE CITY SANITARY BOARD. CURTIS LESTER SECONDED. ALL IN FAVOR

WENDELL HATFIELD MADE THE MOTION TO RECESS FOR 15 MINUTES. RANDY LIVINGOOD SECONDED. MOTION CARRIED.

{SANITARY SEWER BOARD MEETING}

MAYOR ELLIS CALLED THE MEETING TO ORDER.

BILL PEAK MADE THE MOTION TO ACCEPT THE RULES OF THE SUNSHINE LAW. (SEE ATTACHMENT) RICHARD ELLIS SECONDED. ALL IN FAVOR.

RICHARD ELLIS MADE THE MOTION TO APPOINT VIVIAN CARTER AS THE SECRETARY/TREASURER. BILL PEAK SECONDED THE MOTION. ALL IN FAVOR.

MAYOR ELLIS ASKED FOR A MOTION TO APPROVE THE PETITION OF THE SANITARY BOARD TO THE COUNCIL OF GILBERT. BILL PEAK SECOND THE MOTION. MOTION CARRIED.

BILL PEAK MADE THE MOTION TO CLOSE THE MEETING. WITH RICHARD ELLIS SECONDING THE MOTION. MOTON CARRIED.

MAYOR ELLIS ASKED THAT THE REGULAR COUNCIL MEETING OF THE TOWN OF GILBERT RECONVUE. AND DECLARED THAT THERE WAS A QUORUM WAS STILL PRESENT.

MAYOR READ A COPY OF PETITION OF SANITARY BOARD TO COUNCIL AND ASKS FOR A MOTION TO APPROVE THE PETITION. RANDY LIVINGOOD MADE THE MOTION TO APPROVE THE PETITION. WENDELL HATFIELD SECONDED. MOTION CARRIED.

MAYOR ELLIS THEN EXPLAINED THAT THIS IS THE FIRST READING OF THE ORDINANCEAND THAT THERE WOULD BE TWO READINGS AND A PUBLIC HEARING BEFORE THE ORDINANCE CAN BE ADOPTED. MAYOR ELLIS READ TO THE COUNCIL AND TO THE PUBLIC THE BOND AND NOTE ORDINANCE BY HEADINGS AND ALSO READ THE INTRODUCTION TO THE BOND ORDINANCE. WENDELL HATFIELD MADE THE MOTION TO ACCEPT THE BOND ORDINANCE AND CURTIS LESTER SECONDED. MOTION CARRIED.

TOWN OF GILBERT

BOND AND LETTER OF CREDIT ORDINANCE

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND SERIES 1998 B

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Introduced in Council
on the ___ day of _____, 1998

Introduced by
Honorable Richard Ellis, Mayor

Passed by Council
on the ___ day of _____, 1998

An Ordinance authorizing the acquisition and construction of a sanitary sewer collection and treatment system of the Town of Gilbert; authorizing the issuance of two or more series of Sewerage System Revenue Bonds of the Town of Gilbert in aggregate principal amount not to exceed $2,500,000 to be used, along with other funds and moneys of, or available to, the Town of Gilbert which may be lawfully expended for such purposes, to finance the cost of such acquisition and construction and to pay other costs in connection therewith; authorizing a reimbursement agreement to support a letter of credit to match the U. S. Army Corps of Engineers Grant, an interim financing letter of credit and a note to evidence the letter of credit in an amount not to exceed $750,000; providing for the rights and remedies of and security for the owners of such bonds and note; authorizing execution and delivery of all documents relating to the issuance of such bonds and note; approving, ratifying and confirming a loan agreement or loan agreements relating to such bonds and a letter of credit agreement relating to such note; and adopting other provisions related thereto.

Be It Ordained by the Common Council of the Town of Gilbert, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13, Chapter 22C, Article 2 and Chapter 31, Article 15A 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 Ordinance unless the context expressly requires otherwise.

"Act" shall mean collectively Chapter 16, Article 13, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds on behalf of the

Program and the Infrastructure Council, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Bank" shall mean Matewan National Bank, Williamson, West Virginia, and any successor thereto.

"Board" shall mean the Sanitary Board of the Town, as created and appointed by the Council of the Town to operate and manage the System, and any successor thereto.

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

"Bond Construction Trust Fund" shall mean the fund, and such accounts therein, created by Section 6.01 hereof.

"Bondholder" or "Owner of the Bonds" or "Registered Owners" or any similar term shall mean any person who shall be the registered owner of any Outstanding Bond as hereinafter defined.

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

"Bonds" shall mean the Original Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

"Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bonds in substantially the form set forth in Section 3.08 hereof.

"Closing Date" shall mean the date upon which there is an exchange of the Bonds for the proceeds or a portion of the proceeds representing the purchase of the Bonds by the Authority.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

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

"Consulting Engineers" shall mean Woolpert L.L.P., Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Town as Consulting Engineers for the System.

"Contract One" shall mean that portion of the Project relating to the acquisition and construction of the sewerage treatment plant and one associated pump station and other related Costs of the Project, such portion to be constructed under the authority of the Corps of Engineers, to be transferred by the Corps of Engineers to the Town at the completion of construction, and to be financed on an interim basis by the proceeds of the Letter of Credit to be issued by the Bank for the benefit of the Corps of Engineers, to be financed by the proceeds of the Corps of Engineers Grant and a portion of the proceeds of the Infrastructure Grant.

"Contract Two" shall mean that portion of the Project relating to the acquisition and construction of the sewerage collection system, as well as related non-construction costs, such portion to be constructed under the authority of the Town and to be permanently financed by the Small Cities Block Grant, the proceeds of the Bonds, and a portion of the proceeds of the Infrastructure Grant.

"Corps of Engineers" shall mean the United States Army Corps of Engineers.

"Corps of Engineers Grant" shall mean the grant from the Corps of Engineers in the amount of $2,343,252 to be used for Contract One.

"Cost of Project" or "Costs" shall mean those costs described in Section 1.04(G) hereof to be a part of the cost of the acquisition and construction phase of the Project, as the case may be, as hereinafter defined.

"Council" shall mean the Common Council of the Town.

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

"DEP" shall mean the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds the function of the DEP.

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

"Excess Investment Earnings" shall mean an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment earnings] had been equal to the Yield on the Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

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

"Fund" shall mean the "West Virginia Water Pollution Control Revolving Fund" established by the State, administered by the DEP and funded by capitalization grants awarded to the State pursuant to the federal Clean Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of wastewater treatment facilities.

"Grant" shall mean any grant or grants received by the Town in aid of the cost of the design, acquisition and construction of the Project, and shall include the Corps of Engineers Grant, the Small Cities Block Grant, the Infrastructure Grant and any other grants the Town may receive for the permanent financing of the Project.

"Grant Agreement" shall mean a written commitment for the payment of any Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant shall be repaid by the Town.

"Grant Receipts" shall mean all monies received by the Town on account of any Grant.

"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, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company

organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Original Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Original Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Original Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior obligations and which are deemed to become proceeds of the Original Bonds ratably as original proceeds of the Original Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds [as referenced in clauses (i) through (iii) above] of the Original Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Original Bonds and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Original Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Original Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"Gross Revenues" shall mean the aggregate gross operating and non-operating evenues of the System determined in accordance with generally accepted accounting inciples, after deduction of prompt payment discounts, if any, and reasonable provision for ncollectible accounts; provided, that "Gross Revenues" does not include any gains from the ale or other disposition of, or from any increase in the value of, capital assets (including ualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and r the furnishing by the Town of miscellaneous services.

"Independent Accountants" shall mean any certified public accountant or firm certified public accountants which shall be retained by the Town as independent countants for the System or for any other purpose except keeping the accounts of the stem in the normal operation of its business and affairs.

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

"Infrastructure Council Act" means Chapter 31, Article 15A of the Code of est Virginia, 1931, as amended, and in effect on the date of the enactment of this inance.

"Infrastructure Grant" shall mean the grant from the Infrastructure Council to Town for the Project in the amount of $1,250,000, $724,250 to be applied to the project ancing of Contract One and $525,750 to be applied to the project financing of Contract o.

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

"Letter of Credit Agreement" shall mean the reimbursement and letter of credit ment between the Town and the Bank, in the form to be attached to the Supplemental olution, (i) to establish the Series 1998 Letter of Credit and (ii) to supersede and replace letter of credit agreement dated November 30, 1995, between the Bank and the Town and amendment to that letter of credit agreement dated August 29, 1997 between the Bank the Town.

"Loan Agreement" or "Loan Agreements" shall mean (a) the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the Town providing for the purchase of the Series 1998 A Bonds from the Town by the Authority, and/or, as the case may be, (b) the Infrastructure Council loan agreement to be entered into between the Authority and the Town, pursuant to which the Authority shall agree, subject to the Town's satisfying certain legal, engineering and other requirements, to purchase the Series 1998 B Bonds.

"Mayor" shall mean the Mayor of the Town.

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

"Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

"Nonpurpose Investment" shall mean any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Note" shall mean the Series 1998 Note.

"Note Registrar" shall mean the bank designated as such in a resolution supplemental hereto.

"Noteholder," "Holder of the Notes" or "Note Owner" or any similar term shall mean the person who is the registered owner of any Outstanding Note.

"Operating Expenses" shall mean 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 the Authority, DEP, the Infrastructure Council, fiscal agents, the Registrar and the Paying Agent (other than those capitalized as part of the Costs); payments to pension or retirement funds; taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds; charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets; and amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" or "this Ordinance" shall mean this Ordinance, in its present form or as hereafter amended or supplemented.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the not more than $2,500,000 Sewerage System Revenue Bonds, Series 1998 A and Series 1998 B, to be issued for the purpose of paying a portion of the Costs of the acquisition and construction of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

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

"Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof, payable from Net Revenues on a parity with the Original Bonds.

"Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the Town and the Supplemental Resolution with the written consent of the Authority, the Infrastructure Council and the DEP.

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

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

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

"Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

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

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

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

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

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

(h) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia Investment Management Board pursuant to Article 6, Chapter 12 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" shall mean the Recorder of the Town.

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

"Regulations" shall mean the regulations promulgated under the Code.

"Renewal and Replacement Fund" shall mean the fund created by Section 5.01(2) hereof.

"Reserve Requirement" shall mean as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on each series of the Bonds in the then current or any succeeding Fiscal Year.

"Revenue Fund" shall mean the fund created by Section 5.01(1) hereof.

"SRF Administrative Fee" shall mean any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Act" shall mean Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

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

"Series 1998 A Bonds" or "Series A Bonds" shall mean the not more than $1,250,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1998 A, to be purchased by the Authority on behalf of the Fund.

"Series 1998 B Bonds" or "Series B Bonds" shall mean the not more than $1,250,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1998 B, to be purchased by the Authority on behalf of the Infrastructure Council.

"Series 1998 Letter of Credit" or "Letter of Credit" shall mean the $750,000 irrevocable letter of credit established by the Bank for the benefit of the Corps of Engineers.

"Series 1998 Note" shall mean the Sewerage System Revenue Note, Series 1998, in the stated principal amount of $750,000 authorized by Article IV hereof to evidence and secure the repayment of any draw or draws under the Letter of Credit.

"State" shall mean the State of West Virginia.

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

"Surplus Revenues" shall mean the net revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds, including the reserve accounts and the Renewal and Replacement Fund.

"System" shall mean the sanitary sewer collection system, hereafter acquired and constructed, both within and without said Town, to be owned by the Town, and shall include any extensions, additions, betterments and improvements thereto.

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

"Town" shall mean the Town of Gilbert, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any department, board, organization or institution thereof in control of the management and operation of the System, as hereinafter defined.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bonds, produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

"1995 Ordinance" shall mean the Bond and Note Ordinance enacted by the Council of the Town on September 25, 1995 authorizing the acquisition and construction of a wastewater collection and treatment system and the issuance of bonds and notes and the receipt of grant proceeds therefor. The 1995 Ordinance was placed into effect after a public hearing held on October 16, 1995, and is to be revoked and superseded by this Ordinance.

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 gender include all other genders.

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

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

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Original Bonds and Notes any other bonds or notes authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Town and such Bondholders and Noteholders, and the covenants and agreements herein set forth to be performed by said Town shall be for the equal benefit, protection and security of the legal owners of any and all of such Bonds and Notes, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds or any one Note and any other Notes, 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 Town is a municipal corporation and political subdivision of the State in Mingo County of said State. Currently, the Town and surrounding areas have no public sewage disposal system. The Town is under orders by State and federal environmental protection agencies requiring that a centralized sewage collection and treatment system be constructed. Therefore, the Town intends to acquire and construct a sanitary sewer collection system, consisting of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection of sewage (herein referred to as the "Project").

On September 25, 1995, the Council of the Town enacted a Bond and Note Ordinance authorizing the acquisition and construction of a similar project and the issuance of bonds and receipt of grant proceeds therefor (the "1995 Ordinance"). The 1995 Ordinance was placed into effect after a public hearing held on October 16, 1995. For various reasons, however, the project anticipated by the 1995 Ordinance was not constructed, and in the ensuing three years the scope of the acquisition and construction and the proposed financing has changed significantly. Therefore, this Ordinance revokes and supersedes the 1995 Ordinance in all respects.

B. In accordance with Section 3 of the Bond Act, the System will be under the supervision and control of the Sanitary Board of the Town (the "Board"). The Board has presented a petition to the Council for the acquisition and construction of the Project, the enactment of this Ordinance, and the issuance of the Bonds and the Note.

C. The Town will derive Net Revenues from the System, and said Net Revenues are not pledged or encumbered in any manner.

D. The acquisition and construction of the Project is intended to bring the Town into compliance with various environmental laws.

E. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Town that there be acquired and constructed the Project, at an estimated cost of $6,843,252, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by DEP and are on file with the Town, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of forty years.

F. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on each series of Original Bonds of the Town and all sinking fund and other payments provided for in this Ordinance.

G. It is deemed necessary for the Town to issue its Original Bonds in the aggregate principal amount of not more than $2,500,000 to finance the costs of the acquisition and construction of the Project herein described through the Program and the Infrastructure Council. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Original Bonds and the Note prior to and during construction or acquisition and for six months after completion of construction of the Project, if any; repayment of any letter of credit or line of credit used for the Project; engineering, fiscal and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority, DEP and the Infrastructure Council, 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 Original Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition 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 Town for any amounts expended by it for allowable costs prior to the issuance of the Original Bonds or the repayment of the indebtedness incurred by the Town for such purposes shall be deemed part of the Cost of the Project.

H. The Infrastructure Council has approved the Project and has authorized the Authority to purchase bonds of the Town, to provide moneys which, along with the Small Cities Block Grant, the Infrastructure Grant, the Corps of Engineers Grant, and the Bonds authorized hereunder, will finance the Project. The Project will be divided into two parts, designated Contract One and Contract Two.

Contract One consists of the acquisition and construction of a sewerage treatment plant and one associated pump station. Contract One will be funded by the proceeds of the Corps of Engineers Grant and matching funds provided by the Town. The Town will enter into the Letter of Credit Agreement authorized by this Ordinance to provide the Town's matching funds for Contract One. Under the Letter of Credit Agreement, the Bank will issue the Letter of Credit for the benefit of the Corps of Engineers, and the Town will be obligated to repay the principal of and interest on any draws on the Letter of Credit made by the Corps of Engineers. The Town will issue the Note authorized by this Ordinance to secure repayment of the principal of and interest on any such draws. The portion of the Project acquired and constructed under Contract One will be owned by the Corps of Engineers until it is completed. At that time, the Corps will transfer ownership to the Town of the portion of the Project acquired and constructed under Contract One. When this transfer of ownership is completed, (i) the portion of the Project acquired and constructed under Contract One will become part of the System without any further action of the Town, and (ii) a portion of the proceeds of the Infrastructure Grant will be applied to repay the principal of and interest on the Note. The Town will cooperate with the Corps of Engineers on the acquisition and construction of Contract One.

Contract Two consists of the acquisition and construction of the sewerage collection system. The portion of the Project acquired and constructed under Contract Two will be permanently financed by the Small Cities Block Grant, the proceeds of the Bonds, and a portion of the proceeds of the Infrastructure Grant.

It is in the best interests of the Town that its Series 1998 A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and among the Authority, the DEP and the Town, and that its Series 1998 B Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and between the Authority and the Town.

I. The Town hereby finds and determines that an interim financing source is essential to the orderly completion of the Project. The Town hereby authorizes the Mayor to enter into the Letter of Credit Agreement on behalf of the Town for the benefit of the Corps of Engineers in the principal amount of $750,000 to supersede the letter of credit agreement dated November 30, 1995, between the Bank and the Town and the amendment to that letter of credit agreement dated August 29, 1997.

J. It is in the best interests of the Town to obtain the Letter of Credit as provided in the Letter of Credit Agreement in order to provide temporary funds for the completion of the Project; to enter into the Letter of Credit Agreement with the Bank; to issue the Note to evidence any draw upon the Letter of Credit; and subsequently to repay the principal of and interest on the Note from funds available from a portion of the proceeds of the Infrastructure Grant on or prior to the maturity thereof.

K. The Town has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and

issuance of the Original Bonds and the Note, or will have so complied prior to the issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will have expired or will have been waived prior to the issuance of the Original Bonds.

L. The Code provides exceptions from the rebate provisions for issues of small governmental units meeting certain requirements. It is in the best interest of the Town and its inhabitants to qualify for the small governmental unit exception from the rebate provisions for the Original Bonds. Accordingly, it is hereby found and determined:

(1) The Town is a governmental unit with general taxing powers.

(2) The Original Bonds are not private activity bonds as defined by the Code.

(3) Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the Town.

(4) The Town reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town and all subordinate entities thereof during the calendar year in which the Original Bonds will be issued will not exceed $5,000,000.

M. The Town will not permit, at any time, any of the proceeds of the Bonds or any other funds of the Town to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

N. The Town will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

O. The Bonds will not be federally guaranteed within the meaning of the Code.

P. It is reasonably anticipated that all proceeds of the Original Bonds and Note will be spent within three years from the date of issuance.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF SYSTEM

Section 2.01. Authorization of Acquisition and Construction of System. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications prepared by the Consulting Engineers, approved by DEP, the Infrastructure Council and the Town, and on file in the office of the Board.

Prior to issuing the Original Bonds for the acquisition and construction of the Project, the Town must receive acceptable bids or enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program and the Infrastructure Council.

Section 2.02. Revocation of 1995 Ordinance. The 1995 Ordinance is hereby revoked in all respects and the provisions of this Ordinance shall govern the acquisition, construction and financing of the Project.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purposes of funding the reserve accounts, paying costs of issuance and financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, on any one of such items, there shall be issued the Original Bonds of the Town. The Original Bonds shall be issued in two or more series, with the first series to be designated "Sewerage System Revenue Bonds, Series 1998 A" and so on, in an aggregate principal amount of not more than $2,500,000. Each series of Original Bonds shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding forty (40) years after the date of issuance, and in such amount or amounts as shall be set out in each Loan Agreement. The Series 1998 A Bonds shall not bear interest, if any, during the construction period but interest shall commence accruing on the Completion Date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest, if any, on the Series 1998 A Bonds shall begin not later than one (1) year after the completion date. The Series 1998 B Bonds shall not bear interest, if any, during the construction period but interest shall commence accruing on the first month following the final payment of principal and interest on the Series 1998 A Bonds, or such earlier or later date as provided for in Section 5.03A(2) of this Ordinance. The repayment of principal and interest, if any, on the Original Bonds shall be as set forth on Schedule Y to the respective Loan Agreements. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreements and as the Council of the Town shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Original Bonds.

The Bonds shall be payable as to principal, at the principal office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds, if any, shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner thereof, interest on the Original Bonds may be paid by wire transfer or other methods satisfactory to the Town, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of

said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the Town by the Mayor and attested by the Recorder, and the seal of the Town 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 Town 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 Town by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the Town, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain Outstanding, the Town, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the registered Owner thereof in person or by the Owner's attorney duly authorized in writing,

upon surrender thereto together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Owner or the Owner's duly authorized attorney.

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

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Town may, in its discretion, issue and deliver a new Bond 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 Owner's furnishing the Town proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Town may prescribe and paying such expenses as the Town may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the Town. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Town may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Town, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the Town. The Bonds shall not, in any event, be or constitute an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Town to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Original Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the

Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due. The Net Revenues shall also be subject to a lien in favor of the Owners of the Note; provided, that such lien on the Net Revenues is junior, inferior and subordinate in all respects to the lien thereon of the Holders of the Bonds.

Section 3.08. Form of Original Bonds. The text of each series of Original Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

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[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF MINGO
TOWN OF GILBERT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1998 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation of the State of West Virginia, in Mingo County of said State (the "Town"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($_____), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ___, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A. The SRF Administrative Fee (as defined in the hereinafter described Bond Ordinance) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 19__, as set forth on Exhibit B attached hereto.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest, if any, shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of zero percent (0%) per annum. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent. The interest on this Bond, if any, is payable by check or draft mailed to the Authority at the address as it appears on the books of the Registrar on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable, so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated _____, 199__, among the Authority, the DEP and the Town.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater collection facility constituting the sewer system of the Town (the "Project"), [(ii) to fund a reserve account therefor,] and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Town on the ____ day of _____, 1998, and a Supplemental Resolution adopted by the Town on the ___ day of _____, 1998 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE TOWN'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B, ISSUED CONCURRENTLY THEREWITH (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Town within the meaning of any constitutional or statutory provisions or limitations, nor shall the Town be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Town 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 to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Town has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer

satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE TOWN OF GILBERT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the __ day of _____, 1998.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $		(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Town, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF MINGO
TOWN OF GILBERT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1998 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation of the State of West Virginia, in Mingo County of said State (the "Town"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($_____), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ___, _____, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, or such earlier or later date as provided for in Section 5.03A(2) of the hereinafter-defined Ordinance, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the date of completion of the Project, and after such date, interest, if any, shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ___, _____, or such earlier or later date as provided for in Section 5.03A(2) of the hereinafter-defined Ordinance, at the rate of one percent (1%) per annum. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent. The interest on this Bond, if any, is payable by check or draft mailed to the Authority at the address as it appears on the books of the Registrar on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable, so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated _____, 199__, between the Authority, the Infrastructure Council and the Town.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater collection facility constituting the sewer system of the Town (the "Project"), [(ii)

to fund a reserve account therefor,] and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Town on the ____ day of _____, 1998, and a Supplemental Resolution adopted by the Town on the ____ day of _____, 1998 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE TOWN'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, ISSUED CONCURRENTLY THEREWITH (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Town within the meaning of any constitutional or statutory provisions or limitations, nor shall the Town be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Town 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 to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Town has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE TOWN OF GILBERT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the ____ day of _____, 1998.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $		(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Town, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

Section 3.09. Sale of Original Bonds; Ratification and Execution of Loan Agreements. The Original Bonds shall be sold to the Authority, pursuant to the respective terms and conditions of the Loan Agreements. As a ratification of the resolution of Council authorizing execution of the Loan Agreements, the Mayor is specifically authorized and directed to execute the Loan Agreements and the Recorder is directed to affix the seal of the Town, attest the same and deliver the Loan Agreements to the Authority. The Loan Agreements are specifically incorporated into this Ordinance.

Section 3.10. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the Town must obtain the certificate of the Consulting Engineers, in the forms attached to the respective Loan Agreements, to the effect that the Project has been designed as provided in the respective loan program applications and will be constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, as the case may be, that the Project will be adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of the acquisition and construction of the Project.

Section 3.11. Amended Schedule A Filing. Within 60 days following the Completion Date, the Town will file with the Authority its schedule, in substantially the form of "Amended Schedule A" to the Loan Agreements, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV

AUTHORIZATION OF LETTER OF CREDIT

Section 4.01. Authorization of Letter of Credit; Superseding Earlier Letter of Credit. For the purpose of providing funds for the completion of the construction and acquisition of the Project to the extent other funds are not available therefor, the Mayor of the Town is hereby authorized and directed to execute the Letter of Credit Agreement in substantially the form set forth in the Supplemental Resolution, but with such modifications, additions and deletions therein as the Mayor shall determine to be necessary or advisable, such determination to be witnessed conclusively by his execution thereof. The Letter of Credit Agreement shall supersede the letter of credit agreement dated November 30, 1995, between the Bank and the Town and the amendment to that letter of credit agreement dated August 29, 1997.

The Mayor is directed (A) to request that the Bank cancel (i) the irrevocable letter of credit dated November 30, 1995 and issued by the Bank for the benefit of the Department of the Army, acting by and through the Assistant Secretary of the Army (Civil Works), in the amount of $755,000, and (ii) the Straight Irrevocable Letter of Credit dated September 8, 1997, for the benefit of the U.S. Army Engineer District, Huntington in the amount of $509,270, after first having secured the written consent of the beneficiaries of such letters of credit pursuant to their terms; and (B) to request that the Bank issue an irrevocable letter of credit in favor of the Corps of Engineers or its designee pursuant to the Letter of Credit Agreement. It is understood that the irrevocable letter of credit issued by the Bank in the amount of $45,000 and the interest, if any, accrued on the outstanding principal amount drawn on such letter of credit will constitute a Cost of the Project and will be repaid at the closing.

Section 4.02. Authorization of Note. For the purpose of evidencing any draw upon the Letter of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Note in a stated principal amount of $750,000. The Note shall be issued in single, fully registered form, without coupons, and shall be dated as of the date of delivery thereof. There shall be attached to the Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Letter of Credit, the date and amount of any payment of principal of the Note and the amount of the Note outstanding after either of such transactions shall be recorded. Anything to the contrary herein, in the Letter of Credit Agreement or in the Note notwithstanding, the Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the outstanding indebtedness amount of the actual date of each advance or payment, as the case may be, as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable at such times and at such interest rate (not to exceed 12 percent per annum), and shall mature on such date as is set forth in the Supplemental Resolution. Interest shall cease to accrue on the amount of the Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Note shall be subject to such further terms as shall

be provided by the Letter of Credit Agreement. Notwithstanding the foregoing, the terms of the Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act. The principal amount outstanding under the Note shall never exceed the amount available as a source of repayment for the Note under the Infrastructure Grant Agreement.

The Note shall be payable as to principal upon surrender at the principal office of the Registrar, as hereinafter defined, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America; provided, that any partial payment of principal prior to the final maturity of the Note shall be recorded on the Record of Advances and Payments attached to the Note, and the Note shall be returned to the Owner. Interest on the Note shall be paid by check or draft mailed to the Owner thereof at the address as it appears on the books of said Registrar; provided, that, at the option of the Owner, such payment may be made by wire transfer or such other method as shall be agreeable to the Owner, the Town, the Commission (as hereinafter defined) and said Registrar.

The Series 1998 Note shall supersede the note dated November 30, 1995, and issued by the Town pursuant to the 1995 Ordinance and in favor of the Bank in aggregate principal amount of $755,000.

Section 4.03. Execution of Note. The Note shall be executed in the name of the Town by the signature of its Mayor, and the seal of the Town shall be affixed thereto and attested by the signature of the Town Recorder. The Note may be signed and sealed on behalf of the Town by such person as at the actual time of the execution of such Note shall hold the proper office of the Town, although at the date of such Note such person may not have held such office or may not have been so authorized.

Section 4.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Note, shall be conclusively deemed to have agreed that said Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Note or any portion thereof remains Outstanding, the Bank shall keep and maintain books for the registration and transfer of the Note. The Note shall be transferable only upon the books of the Town which shall be kept for that purpose at the office of the Bank (in such capacity and in the capacities of authenticating agent and paying agent as hereinafter provided, the "Registrar") by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Note, there shall be issued at the option of the Owner or the transferee another Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate

principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Note is exercised, Notes shall only be issued in accordance with the provisions of this Ordinance. All Notes surrendered in any such transfers shall forthwith be cancelled by the Registrar. For every such transfer of Notes, the Registrar may make a change sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Note upon each transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Registrar shall not be obliged to make any such transfer of Notes during the ten (10) days preceding an interest payment date on the Notes or after notice of any prepayment of the Notes has been given.

Section 4.05. Form of Note. The text of the Note shall be in substantially the form attached as Exhibit II to the Letter of Credit Agreement, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any supplemental resolution or ordinance adopted or enacted prior to the issuance thereof. The Note shall not become valid until authenticated by the Registrar.

Section 4.06. Security for the Note. The principal of and interest, if any, on the Note are payable solely from and secured by a portion of the proceeds of the Infrastructure Grant. In addition, the Note is payable from and secured by lien on the Net Revenues derived from the operation of the System; provided, that such lien on the Revenues is junior, inferior and subordinate in all respects to the lien thereon of the Holders of the Bonds.

Section 4.07. Note Debt Service Fund. There is hereby created and established with the West Virginia Municipal Bond Commission (the "Commission") a special fund, to be designated the Note Debt Service Fund. Deposits for the payment of principal of and interest and fiscal agency or other charges on the Note shall be made as hereinafter provided. Any moneys in the Note Debt Service Fund shall be invested in investments authorized by this Ordinance, maturing or subject to redemption at the option of the holder, when needed as hereinafter provided. Any such investment earnings shall be credited against the deposit for interest or principal next due.

Section 4.08. Payment of Principal and Interest. The principal of and interest on the Note shall be repaid from a portion of the proceeds of the Infrastructure Grant on the transfer to the Town of that portion of the Project acquired and constructed by the Corps of Engineers under Contract One. Interest on the Note shall accrue from the dates on which draws upon the Letter of Credit are made. Interest on all such draws shall continue to accrue at the rate specified in the Letter of Credit Agreement until paid.

Section 4.09. Note is a Special Obligation. The Note shall be a special obligation of the Town, payable as to principal and interest solely from said sources described in this Article. The Note does not and shall not constitute an indebtedness of the Town within the meaning of any charter, constitutional or statutory provisions. The general funds of the Town are not liable, and neither the full faith and credit nor the taxing power of the Town is pledged, for the payment of the Note. The Owner of the Note shall never have the right to compel the forfeiture of any property of the Town. The Note shall not be a debt of the Town, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Town or upon any of its income, receipts or revenues except as specified in Section 4.06 hereof.

Notwithstanding anything in this Ordinance, the Town shall not be required to advance any money derived from any source of income other than those specified in Section 4.06 hereof for the payment of the principal of or interest on the Note or for the performance of any of its duties under this Ordinance. The Town may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Town for such purpose without incurring indebtedness.

Section 4.10. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Note:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Note;

(B) If default occurs in the Town's observance of any of the covenants, agreements or conditions on its part relating to the Note, in this Ordinance or any resolution or ordinance supplemental hereto or amendatory hereof or in the Note contained, and such default shall have continued for a period of thirty (30) days after the Town shall have been given written notice of such default by the Note Depository or any Owner or registered owner of the Note; or

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

Section 4.11. Remedies. Upon the happening and continuance of any Event of Default, the Owners of the Note may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his 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 the Owners of the Note, including the right to require the Town to perform its respective duties under the Act and this Ordinance relating thereto, (iii) bring suit upon the Note, (iv) by action at law or bill in equity, require the Town to account as if it were the trustee of an express trust for the Owner of the Note, or (v) by action at law or bill in equity enjoin any acts in violation of this Ordinance with respect to the rights of the

Owner of the Note; all subject, however, to the rights of the holders and Owners of the Bonds.

Section 4.12. Appointment of Receiver. The Owner of the Note may, by proper legal action, compel the performance of the duties of the Town under this Ordinance and the Act, all as provided by Section 9.03 of the Ordinance, subject, however, to the rights of the holders and Owners of the Bonds.

Section 4.13. Modification or Amendment. No material modification of or amendment to this Ordinance or any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of any Owner of the Note shall be made without the consent in writing of the Owners or registered owners of two-thirds (2/3) or more in principal amount of the Note, as the case may be, then Outstanding; provided, however, that no change shall be made in the maturity of any Note or the rate of interest thereon, or in the principal amounts thereof, or affecting the unconditional promise of the Town to pay the principal of and interest on the Note out of the funds pledged therefor without the consent of the Owners or registered owners thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of the Note required for consent to the above-permitted amendments or modifications.

Section 4.14. The Bank. The Bank may serve as the Note Registrar regardless of its ownership of the Note. The Bank is further hereby authorized to authenticate the Note and any Notes issued in exchange or as replacements therefor prior to the delivery thereof.

Section 4.15. Note Registrar. The Bank shall also serve as the Note Registrar for the Note. Any successor Note Registrar for the Note shall be designated by the Town in a Supplemental Resolution and must be a bank, trust company or national banking association. Any such successor Note Registrar shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Town a written acceptance thereof. The Note Registrar shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Note Registrar in connection with such services, solely from moneys available therefor.

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 created with and shall be held by the Depository Bank:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund (with a separate subaccount to be established for each series of Bonds); and

(4) Grant Construction Trust Fund (with a separate subaccount to be established for each grant if required by the Granting Agency.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

(1) Sinking Fund;

(a) Within the Sinking Fund, the 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 Ordinance and shall be kept separate and distinct from all other funds of the Town and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

(1) The Town shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Town shall next, on the first day of each month (i) commencing 4 months prior to the first date of payment of interest, if any, on the respective series of Bonds for which interest has not been capitalized (or, in the case of the Series 1998 B Bonds, commencing on the earlier of that date or the first day of the month following the last date of payment of principal of the Series 1998 A Bonds, whichever occurs first), apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the respective Sinking Funds, a sum equal to 1/3rd of the amount of interest which will become due on the respective series of Bonds on the next ensuing quarterly interest payment

date; provided, that, in the event the period to elapse between the date of such initial deposit in the respective Sinking Funds and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 4 months prior to the first date of payment of principal on the respective series of Bonds (or, in the case of the Series 1998 B Bonds, commencing on the earlier of that date or the month after the last date of payment of principal of the Series 1998 A Bonds, whichever occurs first), apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the respective Sinking Funds, a sum equal to 1/3rd of the amount of principal which will mature and become due on the respective series of Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the respective Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03A(2) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(3) The Town shall next transfer from the Revenue Fund and pay to the Commission on the first day of each month, commencing 3 months prior to the first date of payment of principal of each respective series of Bonds (or, in the case of the Series 1998 B Bonds, commencing on the earlier of that date or the month after there shall have been deposited in the Reserve Account for the Series 1998 A Bonds an amount equal to the Series 1998 A Reserve Requirement), if not fully funded upon issuance of such series of Bonds, for deposit in the respective Reserve Account, an amount equal to 1/120 of the respective Reserve Requirement; provided, that no further payments shall be made into the respective Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the respective Reserve Requirement. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03A(3) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(4) The Town shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Town or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the 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 respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the Reserve Account in the respective Sinking Funds shall be used only for the purpose of paying principal of or interest on the respective series of Bonds, as the same shall come due, when other moneys in the respective Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, pro rata, to the respective Sinking Funds.

Any withdrawals from the Reserve Accounts which result in a reduction in the balance of any Reserve Account to an amount below the applicable Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Funds for payment of debt service on the Bonds have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

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

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

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

The Sinking Funds, including the Reserve Accounts therein, shall be used solely and only for, and is hereby pledged for, the purpose of servicing the respective series of Bonds and any additional Bonds ranking on a parity with them that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

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

Simultaneously with the deposits made to the Commission pursuant to Section 5.03A(2) and (3), the Town shall remit to the Commission the SRF Administrative Fee.

The Town shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

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

F. 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.

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

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

Section 5.04. Excess Bond Proceeds. Upon completion of the Project, any proceeds of the Original Bonds not required to pay Costs of the Project shall be applied as directed by the Authority and Council.

ARTICLE VI

APPLICATION OF ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

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

A. From the proceeds of the Bonds, there shall be deposited with the Commission in the respective Reserve Account the sum, if any, set forth in the Supplemental Resolution for funding of said Reserve Account.

B. The remaining moneys derived from the sale of the Original Bonds shall be deposited by the Town, as received from time to time, in the Bond Construction Trust Fund hereinafter established.

C. There is hereby created and established with the Depository Bank a special fund, designated the "Bond Construction Trust Fund". The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Ordinance. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and after all costs have been paid, any remaining proceeds of the Series 1998 A Bonds shall be used as directed in writing by the Authority and any remaining proceeds of the Series 1998 B Bonds shall be used as directed in writing by the Authority and the Infrastructure Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. With respect to the proceeds of the Series 1998 A Bonds, on or before the Closing Date, the Town shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Series 1998 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. With respect to the proceeds of the Series 1998 B Bonds, on or before the Closing Date, the Town shall have delivered to the Infrastructure Council a report listing the specific purposes for which the proceeds of the Series 1998 B Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. With respect to the proceeds of the Series 1998 B Bonds, by the date designated by the Infrastructure Council, the Town shall provide the Infrastructure Council with a requisition for costs incurred for the Project with such documentation as the Infrastructure Council shall from time to time require. Upon receipt of the proceeds from the Authority, the Town shall deposit the proceeds in the Bond

Construction Trust Fund and pay any approved costs. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund (except for the cost of issuance of the Original Bonds which shall be made upon request of the Town) shall be made only after submission to, and approval from, the Authority and the DEP or the Infrastructure Council (as the case may be) of the following:

(1) A "Payment Requisition Form" attached to the SRF Loan Agreement as Exhibit C with respect to the Series 1998 A Bonds or such similar documentation as the Infrastructure Council may require with respect to the Series 1998 B Bonds, and

(2) a certificate, signed by the Mayor and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

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

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

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

All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall, from time to time, file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

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

ARTICLE VII

ADDITIONAL COVENANTS OF THE TOWN

Section 7.01. General Covenants of the Town. All the covenants, agreements and provisions set forth in this Ordinance shall be and constitute valid and legally binding covenants of the Town and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the Town hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be nor constitute an indebtedness of the Town within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Ordinance. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Town to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith, equally and ratably, by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and for the other purposes provided in the Ordinance.

Section 7.04. Rates. Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. The Town shall take the necessary actions with respect to the imposition of rates, at such times and with such provisions with respect to interest rate and maturity of the Bonds, to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Town hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year

equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and the reserve account for the Bonds is funded at least at the requirement provided for in the Ordinances, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds.

Section 7.05. Completion, Operation and Maintenance; Schedule of Cost. The Town will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures, for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof, from the revenues of said System, in the manner provided in the Ordinance.

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

Section 7.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the Town shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Town by the Commission, unless necessary for the payment of other obligations of the Town payable out of the revenues of the System.

The foregoing provision notwithstanding, the Town shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Council may then, if it be so advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars ($10,000), or authorize such sale, lease or other disposition of such property, upon public bidding, if the amount to be received therefor is in excess of ten thousand dollars ($10,000) but not in excess of fifty thousand dollars ($50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of $10,000, shall be deposited in the Renewal and Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $10,000 and not in excess of $50,000, shall be remitted by the

Town to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Town if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars ($50,000) and be insufficient to pay or redeem, prior to maturity, all the Bonds then Outstanding, without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then Outstanding. The Town shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Town shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 7.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 7.08 hereafter. All obligations hereafter issued by the Town payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds to the extent such are Outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund, at the time of the issuance of such subordinate obligations, have been made and are current.

Except as provided above, the Town 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 said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

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

Section 7.08. 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 Ordinance, except

under the conditions and in the manner herein provided and with the prior written consent of DEP, the Infrastructure Council and the Authority.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on the following:

(1) Each series of Original Bonds then Outstanding;

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

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

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Town, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such additional Parity Bonds.

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

Not later than simultaneously with the delivery of such Parity Bonds, the Town shall have entered into written contracts for the immediate acquisition or construction of such

extensions, additions, betterments or improvements to the System which are to be financed by such Parity Bonds.

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds subsequently issued, from time to time, within the limitations of and in compliance with this Section. All the Bonds, 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 Town shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

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

Section 7.09. Insurance and Construction Bonds. The Town will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Town will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and the DEP, so long as the Authority is the Owner of the Bonds. The Town will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the Town, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Town shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used

only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Town shall also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Town shall carry such other insurance as is required by the Authority and DEP and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Town.

The Town 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.

Section 7.10. Consulting Engineers. The Town shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority, the Infrastructure Council and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers. Such resident engineer shall certify to the Authority, the DEP and the Town, at the completion of construction, that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Town shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Town shall notify the DEP in writing of such receipt. The Town shall submit a Performance Certificate, the form of which is attached as Exhibit A to the Loan Agreement and is incorporated herein by reference, to the DEP within 60 days of the end of the first year after the Project is completed.

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

The Town agrees that qualified operating personnel, properly certified by the State, will be retained to operate the System during the entire term of the Loan Agreements.

Section 7.11. Compliance With Loan Agreements, Rules and Regulations. The Town hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreements and to comply with all applicable laws, rules and regulations issued by the Authority, the Infrastructure Council, the DEP or other State, federal or local bodies

in regard to the construction of the Project and operation, maintenance and use of the System.

Section 7.12. No Free Services. The Town will not render or cause to be rendered any free services, of any nature, by its System; and, in the event the Town or any department, agency, instrumentality, officer or employee of the Town 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 Town and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Town shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. 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 7.13. Enforcement of Collections. The Town 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 of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Town further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 7.14. No Competing Franchise. To the extent allowable by law, the Town will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.15. Books, Records and Facilities. The Town 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 Town shall permit the Authority, the

Infrastructure Council, and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System, at all reasonable times, for the purpose of audit and examination. The Town shall submit to the Authority, the Infrastructure Council, and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreements or Grant Receipts or other sources of financing for the Project.

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

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the West Virginia Public Service Commission and the Act. Separate control accounting records shall be maintained by the Town. 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 Town. The Town shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Town shall be reported to such agent of the Town as the Council shall direct.

The Town shall file with the Consulting Engineers and the Authority, the Infrastructure Council and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

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

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

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

The Town shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority, the Infrastructure Council and the DEP. The report of said audit shall include a statement that the Town is in compliance with the terms and provisions of the Act and the Loan Agreements and that the Town's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The Town shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report and forward a copy by the 10th of each month to the Authority, the Infrastructure Council and the DEP.

The Town shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the SRF Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the Town's construction schedule.

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

The Town shall permit the Authority, the Infrastructure Council or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Town shall also provide the Authority, the Infrastructure Council and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority, the Infrastructure Council and the DEP with respect to the System pursuant to the Act.

Section 7.16. Operating Budget. The Board shall, annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority, the Infrastructure Council and the DEP within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made, except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued

operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.17. Mandatory Connection. The mandatory use of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Town and to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Town and a public nuisance, which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.18. Compliance with Loan Agreements. The Town agrees to comply with all the terms and conditions of the Loan Agreements. Notwithstanding anything herein to the contrary, the Town will provide the DEP and the Infrastructure Council with copies of all documents submitted to the Authority.

Section 7.19. Tax Covenants. The Town hereby further covenants and agrees as follows:

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

B. PRIVATE ACTIVITY BOND COVENANT. The Town shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Town to be used directly or indirectly in a manner which would result in the exclusion of the Bonds

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

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

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

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

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

Section 7.20. Statutory Mortgage Lien. For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Bond Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Owners of the Bonds.

Section 7.21. Rebate Covenant. The Town is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Series 1998 B Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Series 1998 B Bonds will be used for local governmental activities of the Town. The Town reasonably expects it and all its subordinate entities to issue less than $5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1998, in which the first series of Series 1998 B Bonds are to be issued. Therefore, the Town believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Town is in fact subject to such rebate requirements, the Town hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further described in Section 8.03. In the event the Town fails to make such rebates as required, the Town shall pay any and all penalties and obtain a waiver from the

Internal Revenue Service in order to maintain the tax-exempt status of interest on the Series 1998 B Bonds.

Section 7.22. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 7.23. Covenant to Amend Resolution. The Town retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Resolution as the Town deems necessary prior to the issuance of the Bonds to meet the requirements of the Authority and the Infrastructure Council.

Section 7.24. Securities Law Compliance. The Town will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

ARTICLE VIII

INVESTMENT OF FUNDS; NON-ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Town in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

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

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Town's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Town shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Original Bonds. In addition, the Town covenants to comply with all regulations, from time to time in effect and applicable to the Original Bonds, as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds used to fund the purchase of the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such

Section 148(f) of the Code and such regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the Town does not quality for an exception to Section 148 of the Code or the Town is otherwise subject to rebate in connection with the Original Bonds, the Town shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Town shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The Town shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Town, to be used for any lawful purpose of the System. The Town shall remit payments to the United States, in the time and at the address prescribed by the regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Town shall assure that such payments are made by the Town to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Town shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Town. To the extent not so performed by the Authority, the Town and the Depository Bank (at the expense of the Town) may provide for the employment of independent attorneys, accountants or consultants, compensated on such reasonable basis as the Town or the Depository Bank may deem appropriate, in order to assure compliance with this Section 8.03. The Town shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code. In the event the Town fails to make such rebates as required, the Town shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

The Town shall submit to the Authority, within 15 days following the end of each Bond Year, a certified copy of its rebate calculation and certificate with respect thereto or, if the Town qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the Town shall submit to the Authority a certificate stating that it

is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Original Bonds subject to rebate. The Town shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as defined in the Code).

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

Section 8.04. Restriction of Yield and Bond Proceeds. The Town shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE IX

DEFAULT AND REMEDIES

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

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

(B) If default occurs in the Town's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the Town shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

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

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

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the Town under the Ordinance and the Act, including 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 default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Town of such default, any Bondholder shall, in addition to all other remedies or rights, have the right, by appropriate

legal proceedings, to obtain the appointment of a receiver to administer the System on behalf of the Town, 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 Ordinance 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 said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Town exercise all the rights and powers of the Town with respect to said facilities as the Town itself might do.

Whenever all that is due upon the Bonds issued pursuant to the Ordinance and interest thereon and under any covenants of the Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the Town upon the entry of an order of the court to that effect. Upon any subsequent default, any owner of Bonds issued pursuant to this Ordinance 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 Town and for the joint protection and benefit of the Town and Owners of Bonds issued pursuant to the Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Town and Bondholders, and the curing and making good of any default under the provisions of the Ordinance, and the title to and ownership of said System shall remain in the Town, 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

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Town shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Town to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

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

ARTICLE XI

MISCELLANEOUS

Section 11.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Town to pay such principal and interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 11.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 11.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 11.04. Covenant of Due Procedure. The Town covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance 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 Council were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 11.05. Abstract of Ordinance and Notice of Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least six full days intervening between each publication, in the Williamson Daily News, a newspaper of general circulation in the Town of Gilbert, together with a notice stating that this Ordinance has been adopted and that the Town contemplates the issuance of the Bonds, and that any person interested may appear before the Town upon a certain date, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Town for review by interested persons during office hours of the Town. The Council 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 Town shall take such action as it shall deem proper in the premises.

Section 11.06. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

First Reading: August 17, 1998

Second Reading
and Passage: August 24 , 1998

Public Hearing: September 14, 1998

This Ordinance was placed into effect following the public hearing held on September 14, 1998.

(SEAL)

Eddie Perry
Recorder

Richard N. Ellis
Mayor

CHASFS3:126888

EXHIBIT A

Project Description

Contract 1

Construction of a 100,000 gallon per day wastewater treatment plant to serve the Town of Gilbert and Slabtown in Mingo County. Includes construction of approximately 7,000 linear feet of 8-inch gravity sewer, approximately 700 linear feet of a 6-inch service lateral, approximately 1,400 linear feet of 4-inch service lateral, approximately 50 manholes and other appurtenances to serve approximately 75 new sewer customers along Stafford Branch Road and Guyan Avenue. In addition a sanitary sewer pumping station and approximately 3,000 linear feet of force main and other appurtenances will be constructed to convey collected wastewater to the wastewater treatment plant.

Contract 2

Construction of a wastewater collection system to serve approximately 278 new sewer customers in the Town of Gilbert and surrounding areas along U.S. Route 52 and State Route 80. The construction will include 3 major pump stations, 8 grinder pump stations, approximately 110 manholes, approximately 48 watertight manholes, approximately 2,065 linear feet of 2-inch force main, approximately 906 linear feet of 4-inch force main, approximately 3,228 linear feet of 6-inch force main, approximately 5,143 linear feet of 6-inch gravity sewer, approximately 18,979 linear feet of 8-inch gravity sewer, approximately 435 linear feet of 10-inch gravity sewer, approximately 3,507 linear feet of 4-inch service lateral, approximately 177 linear feet of 6-inch service lateral, and other appurtenances to construct the collection system. The wastewater will be conveyed to the wastewater treatment plant via the pump station and force main described under Contract 1.

EXHIBIT B

(See Tab No. __)

EXHIBIT C

TOWN OF GILBERT, WEST VIRGINIA

NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on August 24, 1998, the Council of the Town of Gilbert, West Virginia (the "Town") adopted an ordinance which:

1. Authorized the acquisition and construction of a sanitary sewer collection system (the "Project") to the system ("System") of the Town and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $2,500,000 in aggregate principal amount of Sewerage Revenue Bonds, Series 1998 A and 1998 B (the "Bonds"). The Project, estimated at $6,843,252, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $6,843,252.

2. Directed that the Bonds be issued in two series and in the form of one bond each, fully registered with a payment record attached; that interest on the Bonds shall be no more than one percentum (1%) per annum, that said Bonds mature in not more than forty years and that said Bonds be sold for the par value thereof; that the Bonds be executed in the name of the Town by the Mayor, and the seal of the Town be affixed thereto and attested to by the Recorder; that such Bonds be duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and Jobs Development Council and the West Virginia Division of Environmental Protection.

3. Authorized the issuance of a Note of the Town in an amount not to exceed $750,000 to secure a Letter of Credit to provide interim financing for a portion of the Project.

4. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and

Replacement Fund; and provided for the use of excess funds of the System.

5. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

6. Pledged to payment of the Bonds the Net Revenues of the System.

7. Provided upon certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project; provided that the Town will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

9. Established the terms for defaults and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Town 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 thereof at 7:00 p.m., prevailing time, on September 14, 1998, at the Council Chambers, Town Hall, Gilbert, West Virginia, and present objections 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 of Town on August 24, 1998, is on file with the Recorder for review by interested persons at the Town Hall during regular office hours, to-wit: 9:00 a.m. to 5:00 p.m.,Monday through Friday.

_____

Recorder -- Town of Gilbert,
West Virginia

I, the undersigned, as Recorder of the Town of Gilbert, Mingo County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the Town of Gilbert, such records being in the custody of the undersigned and maintained at the Town of Gilbert, Town Hall, Gilbert, Mingo County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 29th day of September, 1998.

Eddie Perry
Recorder

[SEAL]

CHASFS3:126888

MAYOR ELLIS THEN ASKED FOR A SPECIAL MEETING TO BE HELD ON MONDAY, AUG. 24, `1998 AT 6:00 P.M. TO HAVE THE SECOND READING FOR THE BOND AND NOTE ORDINANCE. AND TO APPROVE AND INDUCT THE NEW TOWN RECORDER. WENDELL HATFIELD MADE THAT MOTION WITH CURTIS LESTER SECONDED. MOTION CARRIED.

WENDELL HATFIELD MADE THE MOTION THE AUTHORIZING RESOLUTION, WHICH ALLOW THE MAYOR TO SIGN DOCUMENTS PERTAINING TO THE SEWER SYSTEM. THIS RESOLUTION FWILL ASLO ALLOW THE MAYOR TO SIGN THE LETTERS OF CREDIT NECESSARY FOR THE ARMY CORPS PARTICIPATION. RANDY LIVINGOOD SECONDED THE MOTION. MOTION CARRIED.

JUSTICE PSD MEMBER LARRY DOTSON ASKED TO ADDRESS THE COUNCIL ON THE RATE INCREASE FOR THE JUSTICE PSD. MR. DOTSON ASKED SINCE THE PSC IN PRESENTLY FORCING THEM TO RAISE THEIR RATES IF WE WOULD CONSIDER WAITING FOR A TIME SO THEY SEE HOW THE PEOPLE IN JUSTICE WILL REACT TO THE RATE INCREASE. THE CUSTOMERS OF JUSTICE RATES WILL CHANGE FROM 17.00 TO 19.00 PER 2000 GALLONS OF WATER WHILE THE GILBERT WATER WORKS RATES IS PRESENTLY 12.76 FOR THE 2000 GALLONS OF WATER. THE SUBJECT OF MERGING WITH GILBERT WAS BROUGHT UP BY MR. DOTSON, WHICH WE STATED THAT IF THERE WAS A MERGER THE RATES WOULD PROBABLY, STAY THE SAME. THE CITY COUNCL WAS IN AGREEMENT WITH THE FACT THAT WE ALL MUST DUE WHAT WAS BEST FOR THE CUSTOMER. THAT MUST BE THE FIRST PRIORITY.

SHERRI BRITT THEN ADDRESSED THE COUNCIL ABOUT THE POSSIBILITY OF ANNEXATION OF SPRATTSVILLE. MRS. BRITT STATED SHE WAS FOR THE ANNEXATION BUT WOULD LIKE FOR THE CITY COUNCIL TO HAVE SOMETHING PUT IN THE PAPER ABOUT THIS TO MAKE THE COMMUNITY MORE AWARE OF ALL THE CHARGES THAT WOULD BE PUT ON THEM. WE THEN STATED THAT TODD HAMRICK WITH THE GILBERT POLICE DEPT. WAS PRESENTLY TAKING LETTERS AROUND TO EACH PERSON ON THE PROS AND CONS OF THE ANNEXATION. PROS ARE BEING THE FIRE PROTECTION RATE, POLICE PROTECTION AND THE POSSIBLITY OF STREET LIGHTS. THE CONS WOULD BE A SLIGHTLY HIGHER COUNTY TAXES AND THE 2% UTILITY TAX ON ALL THEIR UTILITY BILLS.

RANDY LIVINGOOD STATED THAT SOMEONE HAD ASKED HIM TO SPEAK TO THE COUNCIL ABOUT HELPING THE YOUNG MARINES IN THE AREA BECAUSE OF THE DEATH OF CECIL DIAMOND.

WENDELL HATFIELD MADE THE MOTION TO ACCEPT THE FINANCIAL STATEMENTS AND MINUTES OF THE PREVIOUS MEETING. CURTIS LESTER SECONDED THAT MOTION. MOTION CARRED.

RANDY LIVINGOOD MADE THE MOTION TO ADJOURN THE MEETING WITH WENDELL HATFIELD SECONDING THE MOTION AT 7:10P.M. MOTION CARRIED.

NOTICE OF SPECIAL MEETING OF THE

COUNCIL OF THE TOWN OF GILBERT

The council of the Town of Gilbert will conduct a special meeting at 6:00 p.m. on Monday, August 24, 1998, at the Town Hall, Gilbert, West Virginia, for the purpose of acting on a bond ordinance and other matters relating to the proposed $2,500,000. Town of Gilbert Sewage System Revenue Bonds and appointing a recorder for the Town of Gilbert. The meeting is open to the public.

Town of Gilbert

By. Vivian Carter
~~Mayor~~ Clerk

SUPPLEMENTAL RESOLUTION

Introduced in Council

September 14, 1998

Introduced by

Richard Ellis, Mayor

Adopted by Council

September 14, 1998

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATE, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE TOWN OF GILBERT SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A AND SERIES 1998 B; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; MAKING PROVISIONS FOR THE PAYMENT OF THE SERIES 1998 BONDS; APPROVING THE FORM OF A REIMBURSEMENT AGREEMENT, A LETTER OF CREDIT AND AN ASSOCIATED NOTE SECURING THE TOWN'S OBLIGATION TO REPAY AMOUNTS DRAWN ON THE LETTER OF CREDIT; DESIGNATING A REGISTRAR FOR THE NOTE; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE NOTE.

WHEREAS, the Common Council (the "Governing Body") of the Town of Gilbert (the "Town"), has duly and officially enacted a Bond Ordinance on September 14, 1998, effective September 14, 1998 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF A SANITARY SEWER COLLECTION AND TREATMENT SYSTEM OF THE TOWN OF GILBERT; AUTHORIZING THE ISSUANCE OF TWO OR MORE SERIES OF SEWERAGE SYSTEM REVENUE BONDS OF THE TOWN OF GILBERT IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $2,500,000 TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF GILBERT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REIMBURSEMENT AGREEMENT TO SUPPORT A LETTER OF CREDIT TO MATCH THE U. S. ARMY CORPS

OF ENGINEERS GRANT, AN INTERIM FINANCING LETTER OF CREDIT AND A NOTE TO EVIDENCE THE LETTER OF CREDIT IN AN AMOUNT NOT TO EXCEED $750,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND NOTE; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS AND A LETTER OF CREDIT AGREEMENT RELATING TO SUCH NOTE; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of The Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A and Series 1998 B (the "Bonds"), in the aggregate principal amount not to exceed $2,500,000, and has authorized the execution and delivery of loan agreements relating to the Bonds, including all amendments and supplements thereto (collectively, the "Loan Agreements"), by and among the Town and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Division of Environmental Protection ("DEP") and the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 16, Article 13, Chapter 22C, Article 2, and Chapter 31, Article 15A, of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the exact principal amounts, maturity dates, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bond Ordinance authorizes the Mayor of the Town to execute a Letter of Credit Agreement with The Matewan National Bank, Williamson, West Virginia, for the benefit of the Corps of Engineers for the purpose of providing the Town's local match to the Corps of Engineers Grant, and further authorizes the Town to issue a Note in favor of The Matewan National Bank to evidence the Town's obligation to repay amounts drawn on the Letter of Credit by the Corps of Engineers; and the Bond Ordinance further provides that the form of the Letter of Credit Agreement and the Note and the designation of a Note Registrar shall be set forth and established by a supplemental resolution;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the exact principal amounts, the prices, the maturity dates, the redemption provisions, the interest rates and the interest and principal payment dates of the Bonds be fixed hereby in the manner stated herein, that other matters relating to the Bonds be herein provided for; and that the form of the Letter of Credit Agreement and the Note and the designation of a Note Registrar be set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined:

(A) That the Abstract and Notice was duly published in the Williamson Daily News, a newspaper of general circulation in the Town with the first publication thereof being on August 27, 1998, which first publication was not less than ten (10) days before the day set by the Ordinance and Notice for the public hearing at which interested persons might appear before the Council of the Town and present protests and suggestions and with the last publications thereof being on September 3, 1998, which last publication dates were prior to said date set by the Ordinance and Notice for the public hearing, and a copy of the Affidavits of Publication reflecting such publications are attached hereto as Exhibit A and incorporated herein;

(B) That in accordance with the Ordinance and the Notice, the Recorder of the Town has maintained in her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) That, in Council chambers, Town Hall, Gilbert, West Virginia on Monday, September 14, 1998 at 6:00 p.m. prevailing time, in accordance with the Ordinance and Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) That, at the public hearing, no significant reasons were presented that could require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Town; and

(E) The Ordinance shall be put into effect as of the date hereof and the Series 1998 A and Series 1998 B Bonds contemplated thereby shall be issued, all as provided in the 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:

(A) $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A, of the Town, originally represented by a single Bond, numbered AR-1, in the principal amount of $1,250,000. The Series 1998 A Bonds shall be dated the date of delivery thereof and shall finally mature March 1, 2020, and shall bear no interest. The principal on the Series 1998 A Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2000. The Series 1998 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, upon payment of the redemption premium, if any, and upon continued compliance with the applicable Loan Agreement, so long as the Authority shall be the registered owner of the Series 1998 A

Bonds, and shall be payable in installments of principal in the amounts as set forth in "Schedule Y," attached thereto and incorporated herein by reference. The Town shall pay the 1% SRF Administrative Fee as provided in the applicable Loan Agreement.

(B) $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B, of the Town, originally represented by a single Bond, numbered BR-1, in the principal amount of $1,250,000. The Series 1998 B Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2038, and shall bear interest at the rate of one percent (1.00%) per annum, commencing March 1, 2020, or on such earlier or later date as provided for in Section 5.03A(2) of the Bond Ordinance. Both principal of and interest on the Series 1998 B Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2020, or on such earlier or later date as provided for in Section 5.03A(2) of the Bond Ordinance. The Series 1998 B Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, upon payment of the interest and redemption premium, if any, upon continued compliance with the applicable Loan Agreement, so long as the Authority shall be the registered owner of the Series 1998 B Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and incorporated herein by reference.

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 Town does hereby ratify the Loan Agreements, copies of which are incorporated herein by reference, and the execution and delivery of the Mayor of the Loan Agreements, and the performance of the obligations contained therein, on behalf of the Town are hereby authorized, directed, ratified and approved. The Town hereby affirms all covenants and representations made in the Loan Agreements and in the Applications to the DEP, Infrastructure Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds will be advanced from time to time as requisitioned by the Town.

Section 5. The Town does hereby appoint and designate The Matewan National Bank, Williamson, West Virginia, as Registrar (the "Registrar") for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Town and the Registrar, in substantially the form attached hereto, and the execution and delivery by the Mayor of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the Town are hereby authorized, approved and directed.

Section 6. The Town does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 7. The Town does hereby appoint The Matewan National Bank, Williamson, West Virginia, as Depository Bank under the Bond Ordinance.

Section 8. The Town has created the Reserve Accounts which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Accounts hold an amount equal to the maximum amount of principal and interest which will mature and become due on each Series of Bonds in the then current or any succeeding year. Moneys in the Reserve Accounts and the Sinking Funds (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

Section 9. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Bond Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds.

Section 10. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about September 29, 1998, to the Authority pursuant to the Loan Agreements.

Section 11. The Town 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 Town hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the Town. Moneys in the Series A and Series B Sinking Funds, including the Series A and Series B Reserve Accounts therein, shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 12. The Town shall not permit at any time or times any of the proceeds of the Series 1998 B Bonds or any other funds of the Town to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Series 1998 B Bonds as "private activity bonds" within the meaning of the Code. The Town will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 13. The Town hereby approves the form of the Letter of Credit Agreement, attached hereto as Exhibit B, and the exhibits thereto, including the form of the Note, and authorizes the Mayor to enter into the Letter of Credit Agreement with The Matewan National Bank and to execute the Note.

Section 14. The Town does hereby appoint The Matewan National Bank, Williamson, West Virginia, as Registrar for the Note under the Bond Ordinance.

Section 15. The SRF Payment Requisition Form in the form attached as Exhibit C is hereby approved and the Mayor is authorized to execute a copy of the same and to deliver it to DEP. The Town has reviewed the invoices identified in Exhibit C hereto and finds as follows:

A. That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made;

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

C. That each such cost has been otherwise properly incurred; and

D. That the payment for each of the items proposed is now due and owing.

In light of the foregoing, there is authorized and directed the payment of the invoices identified in Exhibit C hereto.

Section 16. The financing of the Project in part with proceeds of the Bonds and the issuance of the Note are in the public interest, serve a public purpose of the Town and will promote the health, welfare and safety of the residents of the Town.

[Remainder of this page intentionally left blank]

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

The foregoing Resolution was read and duly adopted at a regular meeting of the Common Council of The Town of Gilbert held on the 14th day of September, 1998.

THE TOWN OF GILBERT

[SEAL]

Richard N. Ellis
Mayor

ATTEST:

Eddie Perry
Recorder

CHASFS3:129247

EXHIBIT A

[Affidavit of Publication]

Fed ID 55 0464593

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

I, Renee Copley, Assistant Business Manager of the WILLIAMSON DAILY NEWS, Inc., a paper published in the County aforesaid, do swear that the notice _____ hereto attached was published in said paper for 2 successive weeks, the first publication thereof being on the 27th day of August 19 98, and subsequent publication on the 3rd day of September 19 98, the _____ day of _____ 19 ____, the _____ day of _____ 19 ____, the _____ day of _____ 19 ____, and the _____ day of _____ 19 ____.

Renee Copley

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

_____ being duly sworn, says that she posted a copy of the annexed _____ at the front door of the Court House of said County, on the _____ day of _____ 19 ____.

_____

Taken, subscribed and sworn to before me, this 3rd day of September, 19 98. Printer's Fee $ 83.16

Sandra P. Criddle

Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SANDRA P. CRIDDLE
P.O. BOX 212
RED JACKET, WV 25685
My Commission Expires February 13, 2002

My commission expires Feb. 13, 2002

TOWN OF GILBERT, WEST VIRGINIA NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on August 24, 1998, the Council of the Town of Gilbert, West Virginia (the "Town") adopted an ordinance which:

1. Authorized the acquisition and construction of a sanitary sewer collection system (the "Project") to the system ("System") of the Town and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $2,500,000 in aggregate principal amount of Sewerage Revenue Bonds, Series 1998 A and 1998 B (the "Bonds"). The Project, estimated at $6,843,252, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $6,843, 252.

2. Directed that the Bonds be issued into series and in the form of one bond, each, fully registered with a payment record attached: that interest on the Bonds shall be no more than one percentum (1%) per annum, that said Bonds mature in not more than forty years and that said Bonds be executed in the name of the Town by the Mayor, and the seal of the Town be affixed thereto and attested to by the Recorder: that such Bonds by duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and

and the West Virginia Division of Environmental Protection.

3. Authorized the issuance of a Note of the Town in an amount not to exceed $750,000 to secure a Letter of Credit to provide interim financing for a portion of the Project.

4. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and Replacement Fund; and provided for the use of excess funds of the System.

5. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

6. Pledged to payment of the Bonds the New Revenues of the System.

7. Provided upon certain conditions for the insurance of additional bonds.

8. Provided for insurance coverage on the Project; provided that the Town will render no free services; provided for the enforcement of collection of fees, rates, rentals or other charges for services.

9. Established the terms for defaults and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Town 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 Tow of Gilbert at a regular meeting thereof at &:00 p.m., prevailing time, on September 14, 1998, at the Council Chambers, Town Hall, Gilbert, West Virginia, and present objections 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 of Town on August 24, 1998, is on file with the Mayor for review by interested persons at the Town Hall during regular office hours, to-wit: 9:00 a.m. to 5:00 p.m., Monday through Friday.

/s/ Richard Ellis
Mayor-- Town of Gilbert
West Virginia
128803

8;27/ 9; 3

EXHIBIT B

[Form of Letter of Credit Agreement]

_____, 1998

Town of Gilbert
P. O. Box 188
Gilbert, West Virginia 25621-0188

Re: $750,000 Irrevocable Letter of Credit

Ladies and Gentlemen:

At your request and on your instruction, we, the undersigned bank (the "Bank"), hereby establish in favor of the U. S. Army Engineer District, Huntington (the "Beneficiary") an irrevocable letter of credit in the amount of $750,000 (the "Stated Amount") in the form attached as Exhibit I hereto. The Beneficiary may draw upon such letter of credit from time to time as hereinafter set forth, but the aggregate amount outstanding at any time may not exceed the Stated Amount.

This letter of credit is extended on your behalf for the purpose of providing funds for your matching share of the project designated as "Contract One." It is our understanding that this letter of credit was authorized by the Bond and Letter of Credit Ordinance enacted by the Council of the Town of Gilbert on September 14, 1998 (the "LOC Ordinance"). Capitalized terms used and not otherwise defined in this letter shall have the respective meanings given them in the LOC Ordinance. This letter of credit agreement shall supersede the letter of credit agreement dated November 30, 1995, between the Bank and the Town and the amendment to that letter of credit agreement dated August 29, 1997.

The letter of credit is irrevocable as set forth therein. The Beneficiary may make draws upon the letter of credit by presenting to the Bank a letter substantially in the form of Exhibit II hereto. The terms of the letter of credit shall govern the method and timing of draws thereon, the Bank's responsibilities with respect to payment on such draws, and the expiration of the letter of credit.

The Town's obligation to repay the Bank for any draw upon the letter of credit shall be evidenced by its sewerage system revenue note (the "Note") in the stated principal amount of $750,000, in substantially the form attached as Exhibit III hereto. Notwithstanding said stated principal amount, the Note shall evidence only the outstanding indebtedness reflected on the Record of Advances and Payments attached hereto. Each advance shall bear interest at such rate, payable at such times, and the Note shall mature and be subject to prepayment and such other terms and provisions, as shall be described in Exhibit III.

All documents presented to us in connection with any demand for a draw upon the letter of credit, as well as all notices and other communications to us in respect of this letter or the letter of credit, shall be in writing and addressed and presented to us at our above address. Such documents, notices and other communications shall be personally delivered to us.

This letter sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement except only Exhibits I, II and III hereto and the LOC Ordinance. Upon execution by the Mayor of the Town of the duplicate letter attached hereto and return of such letter to us, and the Note, this letter shall become an agreement between the Bank and the Town, governed by the laws of the State of West Virginia.

Very truly yours,

THE MATEWAN NATIONAL BANK

By:_____

Its:_____

Accepted this _____ day of September, 1998.

THE TOWN OF GILBERT, WEST VIRGINIA

By: _____

Mayor

EXHIBIT I

[LETTERHEAD OF THE MATEWAN NATIONAL BANK]

STRAIGHT IRREVOCABLE LETTER OF CREDIT

The Matewan National Bank (hereinafter referred to as the "Bank") grants a straight irrevocable letter of credit (hereinafter referred to as the "Letter of Credit") for the amount of $750,000.00 to the U.S. Army Engineer District, Huntington (hereinafter referred to as the "Beneficiary") on behalf of the Town of Gilbert, WV (hereinafter referred to as the "Guarantor"), for the Town of Gilbert Sewage Collection and Treatment System, Gilbert, WV (hereinafter referred to as the "Project"). It is understood that this Letter of Credit cannot be amended, revoked, cancelled, reduced, or otherwise affected without the prior express written consent of the Beneficiary.

The Beneficiary can demand payment from the Bank up to an amount of $750,000.00 or fractions thereof, up to said amount. This Letter of Credit will only be considered terminated once the withdrawal of $750,000.00 has been completed, or by written agreement between the Beneficiary and the Guarantor, or upon completion of the Project as solely determined by the Beneficiary.

The Beneficiary has the exclusive right to demand payment of any sums under the terms of this Letter of Credit from the Bank. The demand shall be made by presentation of a letter, either in person or by certified mail to the Bank, similar to Attachment A signed by the District Engineer, U.S. Army Engineer District, Huntington.

The Bank's payment of the demand shall be made by means of a certified check payable to "FAO, USAED, Huntington". Payment shall be made immediately if the demand is made in person or within one Bank working day after the Bank receives the demand via certified mail. The Beneficiary names the District Engineer, U.S. Army Engineer District, Huntington, or his officially designated representative, as the official authorized to make demand upon the Bank and the official to receive the certified check either in person or by certified mail.

Nothing in this Letter of Credit will be construed as making the Beneficiary responsible in any manner for any failure of the Guarantor to provide adequate assurances to the Bank.

The parties hereto have accepted this Letter of Credit and its terms on this the _____ day of September, 1998.

THE BANK	THE BENEFICIARY
BY: _____	BY: _____
TRANQUILLA WHITT Vice President - Commercial Lending The Matewan National Bank P.O. Box 100 Williamson, WV 25661	DANA ROBERTSON Colonel, District Engineer U.S. Army Engineer District, Huntington

Exhibit II

[Sample Draw Letter -- Attachment A to Letter of Credit]

[Letterhead of the Beneficiary]

The Matewan National Bank
P.O. Box 100
Williamson, WV 25661
Attention: Vice-President
Commercial Lending

Dear _____:

Pursuant to the irrevocable letter of credit number 8180937 dated September __, 1998, issued by The Matewan National Bank to the U. S. Army Engineer District, Huntington, for the Town of Gilbert, it is requested that a draft be drawn upon this Letter of Credit in the amount of $_____. This request is pursuant to the Project Cooperation Agreement entered into on March 20, 1998, between the Town of Gilbert and the Department of the Army for the design and construction of the sewerage treatment plant for the Town of Gilbert.

The check should be made payable to "FAO, USAED, Huntington" and mailed to the attention of _____ at the address above.

Any questions concerning this request may be addressed to _____ at (304) 529-____ or to _____ at (304) 529-____.

U. S. ARMY ENGINEER DISTRICT,
HUNTINGTON

BY:_____
DANA ROBERTSON
Colonel, District Engineer
U.S. Army Engineer District,
Huntington

EXHIBIT III

United States of America
State of West Virginia
Town of Gilbert
Sewerage System Revenue Note
Series 1998
Number R-1
$750,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Town"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to The Matewan National Bank, Williamson, West Virginia (the "Owner"), or registered assigns, the sum of Seven Hundred Fifty Thousand Dollars ($750,000), or such lesser sum as shall be reflected by the Record of Advances and Payments attached hereto, on demand. Notwithstanding any provision of this Note to the contrary, this Note shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto, provided that the Record of Advances and Payments shall reflect the specific Project for which each advance or payment is made. Interest shall accrue only on the amount of the outstanding indebtedness from the actual date of each advance or payment, as the case may be, as listed on said Record of Advances and Payments and shall cease to accrue on the amount hereof outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. Such interest shall be at the rate of two percent per annum above the prime rate as published from time to time in The Wall Street Journal, adjusted daily on the basis of a 365-day year. Such interest is payable on the date on which the entire principal amount of this Note is repaid, or, if a portion of the outstanding principal amount of this Note is repaid in advance of the repayment of the remainder of the outstanding principal amount, all interest accrued on such portion shall be paid at the time of repayment in advance of such portion. The Registrar, as hereinafter defined, shall notify the Town of the amount of interest so accrued. This Note shall be payable as to principal upon surrender at the principal office of The Matewan National Bank, Williamson, West Virginia, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America; provided, that, except in the case the Note is being prepaid in full and either (i) the Town's notice of prepayment requires surrender or (ii) the Letter of Credit, as hereinafter defined, has expired, any payment of principal prior to the maturity of this Note as provided by the Ordinance, as hereinafter defined, shall be recorded on the Record of Advances and Payments attached hereto, and this Note shall be returned to the Owner. Prepayments of the principal of this Note may be made upon two (2) days' notice to the Owner. Any such prepayment shall also be reflected on the Record of Advances and Payments attached hereto, and interest shall cease to accrue thereon.

This Note is issued pursuant to the Bond and Note Ordinance enacted by the Council of the Town on September 14, 1998 (the "Ordinance"), to evidence the Town's obligation to repay any draw upon a letter of credit (the "Letter of Credit") by the U.S. Army Engineer District, Huntington (the "Beneficiary") from The Matewan National Bank, Williamson, West Virginia (the "Bank"). This Note was issued to provide funds for the acquisition and construction of a sewerage treatment plant for the Town to the extent grant proceeds and other funds are not timely available therefor.

This Note is issued, in addition to the Ordinance, under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and is subject to all the terms and provisions of said Ordinance and said Act. The principal of and interest on this Note are payable from a portion of the proceeds of the Infrastructure Grant. The principal of and interest on this Note are further payable from and secured by a lien on the revenues derived from the operation of the sewerage system of the Town; provided, that such lien on the revenues is junior, subordinate and inferior to the lien on such net revenues created on behalf of the Bonds, as set forth in the Ordinance.

This Note does not constitute a corporate indebtedness of the Town within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Town be obligated to pay the same or the interest hereon except from the special fund provided from the proceeds of the Infrastructure Grant and the net revenues derived from the operation of said sewerage system. Under the Ordinance, the Town has entered into certain covenants with the Owner, for the terms of which reference is made to said Ordinance. Remedies provided the Owner are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable, as provided in the Ordinance, only upon the books of the Town at the office of the Registrar by the Owner in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to said Registrar duly executed by the Owner or his duly authorized attorney. Upon transfer hereof, there shall be issued another fully registered Note or fully registered Notes of the aggregate stated principal amount equal to the stated principal amount thereof but evidencing only the indebtedness reflected on the Record of Advances and Payments attached hereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount hereof as reflected on the Record of Advances and Payments attached hereto.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note exist, have happened and have been performed in due time, form and manner as required by law, and that this Note, together with all other obligations of the Town, does not exceed any limit prescribed by the Constitution or statutes of the State of

West Virginia and that the proceeds of a portion of the Infrastructure Grant and the net revenues of the sewerage system of the Town have been pledged to and will be set aside into a special fund by the Town for, and will be sufficient for, the payment of the principal and interest on this Note.

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

IN WITNESS WHEREOF, the Town of Gilbert, West Virginia, has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by the Recorder, all as of the ___ day of _____, 1998.

_____
Mayor

[SEAL]

Attest:

_____
Recorder

CERTIFICATE OF AUTHENTICATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name set forth above on the date set forth below.

Date: _____

_____,
as Registrar

By _____
Its Authorized Officer

RECORD OF ADVANCES AND PAYMENTS*

Date	Amount Advanced	Principal Payment	Project	Outstanding** Balance	Authorized Officer

* To be completed upon each draw upon or repayment on the Letter of Credit, with the specific project for which the advance or payment is being made being noted

** Not to exceed $_____ at any one time.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____ the Sewerage System Revenue Note, Series 1998, dated _____, 1998, of the Town of Gilbert, West Virginia, and does hereby irrevocably constitute and appoint _____, attorney to transfer said Note on the books of said Town with full power of substitution in the premises.

_____

DATED: _____

IN THE PRESENCE OF: _____

Exhibit C

PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR:

NAME: Town of Gilbert

ADDRESS: P.O. Box 188

Gilbert, WV 25621-0188

TELEPHONE: (304) 664-9625

FEIN: 550519751

2. SRF PROJECT NO. C-544 016

3. INVOICE NUMBER 1

4. PERIOD COVERED BY THIS REQUEST

FROM (MO/DAY/YR) TO (MO/DAY/YR)

9-10-98 9-29-98

5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 0%

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED TOTALS	C) THIS REQUEST	D) TOTAL (B & C)	E) APPROVED AGENCY USE ONLY
1) CONSTRUCTION	1,225,000	-0-	37,500	37,500	
a. Equipment					
2) TECHNICAL SERVICES - BASIC					
a. Engineering Other					
a. Inspection					
3) LEGAL/FISCAL					
4) ADMINISTRATIVE					
5) LAND					
6) FEE INTEREST					
7) LOAN REPAYMENT					
8) CONTINGENCY					
9) INTERIM FINANCING COSTS					
10) RESERVE FUND					
11) CLOSING COST	25,000	-0-	25,000	25,000	
12) SUBTOTAL	1,250,000	-0-	62,500	62,500	
13) LESS PREVIOUSLY PAID					
14) INVOICE AMOUNT					

15) RECIPIENT AUTHORIZED SIGNATURE:

INVOICE DATE

Richard N. Ellis, Mayor

TYPED OR PRINTED NAME AND TITLE

16) SIGNATURE OF PERSON PREPARING THIS REQUEST

David Michael 9-10-98

DATE

David Michael
Senior Project Administrator

TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY

THIS REQUEST APPROVED BY:

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

PROJECT REVIEWER/BRANCH LEADER DATE

AUTHORIZED OFFICER DATE

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

AUTHORIZED OFFICER DATE

ACCOUNTING CLASSIFICATION - DEP USE ONLY

ACCOUNTING NUMBER:

AMOUNT APPROVED:

F-91

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The Town of Gilbert on the 29th day of September, 1998.

Dated: September 29, 1998.

Eddie Perry
Recorder

CHASFS3:129247

TOWN OF GILBERT

SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND SERIES 1998 B

EXCERPT OF MINUTES ON
PUBLIC HEARING AND ADOPTION OF SUPPLEMENTAL RESOLUTION

I, Eddie Perry, Recorder for the Town of Gilbert (the "Town"), hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the said Town:

The Town met in special session, pursuant to notice duly given, published and posted, copies of which are attached hereto and incorporated herein, on the 14th day of September, 1998, at Town Hall, Gilbert, West Virginia, at 6:00 p.m., prevailing time.

Present: Richard Ellis, Mayor
Eddie Perry, Recorder;
Council Member Bob Billups;
Council Member Wendell Hatfield; and
Council Member Curtis Lester.

Also present were Tim Rutledge, Town Administrator, Samme L. Gee, Esq. of Jackson & Kelly, Bond Counsel and Pam Lambert, Counsel to the Issuer.

Richard Ellis, Mayor, presided and Eddie Perry served as Recorder.

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

Ms. Gee presented a Bond Ordinance in writing entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF A SANITARY SEWER COLLECTION AND TREATMENT SYSTEM OF THE TOWN OF GILBERT; AUTHORIZING THE ISSUANCE OF TWO OR MORE SERIES OF SEWERAGE SYSTEM REVENUE BONDS OF THE TOWN OF GILBERT IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $2,500,000 TO BE USED, ALONG WITH OTHER FUNDS AND

MONEYS OF, OR AVAILABLE TO, THE TOWN OF GILBERT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REIMBURSEMENT AGREEMENT TO SUPPORT A LETTER OF CREDIT TO MATCH THE U. S. ARMY CORPS OF ENGINEERS GRANT, AN INTERIM FINANCING LETTER OF CREDIT AND A NOTE TO EVIDENCE THE LETTER OF CREDIT IN AN AMOUNT NOT TO EXCEED $750,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND NOTE; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS AND A LETTER OF CREDIT AGREEMENT RELATING TO SUCH NOTE; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

There being no comments from people present nor were there any written protests. Thereupon, on motion of Council Member Curtis Lester, seconded by Council Member Bob Billups, it was unanimously ordered that said Bond Ordinance shall be enacted on and from the date hereof.

Ms. Gee presented a Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATE, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE TOWN OF GILBERT

SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A AND SERIES 1998 B; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; MAKING PROVISIONS FOR THE PAYMENT OF THE SERIES 1998 BONDS; APPROVING THE FORM OF A REIMBURSEMENT AGREEMENT, A LETTER OF CREDIT AND AN ASSOCIATED NOTE SECURING THE TOWN'S OBLIGATION TO REPAY AMOUNTS DRAWN ON THE LETTER OF CREDIT; DESIGNATING A REGISTRAR FOR THE NOTE; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE NOTE.

Thereupon, on motion of Council Member Curtis Lester, seconded by Council Member Bob Billups, it was unanimously ordered that said Supplemental Resolution shall be adopted 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.

[Remainder of Page Intentionally Left Blank]

I hereby certify that the foregoing action of said Town remains in full force and effect and has not been amended or appealed.

WITNESS my signature on this 29th day of September, 1998.

[SEAL]

Eddie Perry

Eddie Perry, Recorder

CHASFS3:131170

NOTICE OF SPECIAL MEETING OF THE

COUNCIL OF THE TOWN OF GILBERT

The Gilbert Town Council will meet at the regular time of 6:00 p.m. at the Gilbert City Hall on Sept. 14, 1998. This will be a regular scheduled meeting. The reason for the change of the date is because that the regular scheduled meeting was a legal holiday and city hall was closed for the holiday.

Town of Gilbert

By. RICHARD ELLIS
Mayor

MEETINGS

SEPTEMBER 14

TUG VALLEY CHAMBER OF COMMERCE will meet at noon at the Brass Tree Restaurant for their September meeting.

GILBERT CITY COUNCIL will meet in regular session at 6 p.m.

DELBARTON TOWN COUNCIL will meet at 7 p.m. at Town Hall.

KERMIT TOWN COUNCIL will meet in regular session at 7 p.m.

SEPTEMBER 15

MINGO COUNTY COMMISSION will meet in special session at 5 p.m. in Room 136 of the Mingo County Courthouse.

Fed ID 55 0464593

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

I, Renee Copley, Assistant Business Manager of the WILLIAMSON DAILY NEWS, Inc., a paper published in the County aforesaid, do swear that the notice hereto attached was published in said paper for 2 successive weeks, the first publication thereof being on the 27th day of August 19 98, and subsequent publication on the 3rd day of September 19 98, the _____ day of _____ 19 ____, the _____ day of _____ 19 ____, the _____ day of _____ 19 ____, and the _____ day of _____ 19 ____.

Renee Copley

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

_____ being duly sworn, says that she posted a copy of the annexed _____ at the front door of the Court House of said County, on the _____ day of _____ 19 ____.

_____

Taken, subscribed and sworn to before me, this 3rd day of September, 19 98. Printer's Fee $ 83.16

Sandra P. Criddle

Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SANDRA P. CRIDDLE
P.O. BOX 462
RED JACKET, WV 25692
My Commission Expires February 13, 2002

My commission expires Feb. 13, 2002

TOWN OF GILBERT, WEST VIRGINIA NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on August 24, 1998, the Council of the Town of Gilbert, West Virginia (the "Town") adopted an ordinance which:

1. Authorized the acquisition and construction of a sanitary sewer collection system (the "Project") to the system ("System") of the Town and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $2,500,000 in aggregate principal amount of Sewerage Revenue Bonds, Series 1998 A and 1998 B (the "Bonds"). The Project, estimated at $6,843,252, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $6,843, 252.

2. Directed that the Bonds be issued into series and in the form of one bond, each, fully registered with a payment record attached: that interest on the Bonds shall be no more than one percentum (1%) per annum, that said Bonds mature in not more than forty years and that said Bonds be executed in the name of the Town by the Mayor, and the seal of the Town be affixed thereto and attested to by the Recorder: that such Bonds by duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and

and the West Virginia Division of Environmental Protection.

3. Authorized the issuance of a Note of the Town in an amount not to exceed $750,000 to secure a Letter of Credit to provide interim financing for a portion of the Project.

4. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and Replacement Fund; and provided for the use of excess funds of the System.

5. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

6. Pledged to payment of the Bonds the New Revenues of the System.

7. Provided upon certain conditions for the insurance of additional bonds.

8. Provided for insurance coverage on the Project; provided that the Town will render no free services; provided for the enforcement of collection of fees, rates, rentals or other charges for services.

9. Established the terms for defaults and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Town 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 Tow of Gilbert at a regular meeting thereof at &:00 p.m., prevailing time, on September 14, 1998, at the Council Chambers, Town Hall, Gilbert, West Virginia, and present objections 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 of Town on August 24, 1998, is on file with the Mayor for review by interested persons at the Town Hall during regular office hours, to-wit: 9:00 a.m. to 5:00 p.m., Monday through Friday.

/s/ Richard Ellis
Mayor-- Town of Gilbert
West Virginia
128803

8;27/ 9; 3

SRF-LP-1
(August 1998)

LOAN AGREEMENT

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

TOWN OF GILBERT
(Local Government)

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

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

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

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

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

(b) Covenants substantially as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

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

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

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

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

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

ARTICLE VI

Other Agreements of the Local Government

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

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

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

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

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

Town of Gilbert
[Proper Name of Local Government]

(SEAL)

By: Richard N. Ellis
Its: Mayor

Attest:

Date: 9/3/98

Eddie Perry
Its Recorder

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: Barbara S. Jayko
Its: Chief

Date: 9/9/98

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Dennis B. Lyon
Its: Director

Attest:

Date: September 2, 1998

Barbara B. Meadows
Secretary-Treasurer

EXHIBIT A

[Form of Performance Certificate]

[TO BE PROVIDED BY DEP]

EXHIBIT B

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

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

Witnesseth my signature this __ day of ____, ____.

[Name of Local Government]

By: _____
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

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

1. The Bonds are being issued for the purpose of _____ _____ (the "Project").

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

acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this _____ day of _____, 19___.

_____

By _____

West Virginia License No. __

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

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

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

C. Prior to closing, the Title Opinion from the Town's Attorney must be completed.

D. Prior to closing, the PSC Certificate must be issued.

EXHIBIT F

[Monthly Payment Form]

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

Re: [Name of bond issue]

Dear Sirs:

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

Sinking Fund:

Interest	$_____	
Principal	$_____	
Total:		$_____
Reserve Fund:	$_____	

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

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

Gentlemen:

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

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

Year	Installment	Interest Rate

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	$ 1,250,000
Purchase Price of Bonds	$ 1,250,000

Interest on the Bonds shall be zero percent from the date of delivery to ~~and including~~ _____. Principal ~~and interest~~ on the Bonds is payable quarterly, commencing June 1, 2000, at a rate of 0 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule)

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

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

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

Town of Gilbert, WV

SRF Loan

$1,250,000; 20 Years; 0% Interest Rate; 1% Administrative Fee

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
3/01/2000	-	-	-
6/01/2000	15,625.00	-	15,625.00
9/01/2000	15,625.00	-	15,625.00
12/01/2000	15,625.00	-	15,625.00
3/01/2001	15,625.00	-	15,625.00
6/01/2001	15,625.00	-	15,625.00
9/01/2001	15,625.00	-	15,625.00
12/01/2001	15,625.00	-	15,625.00
3/01/2002	15,625.00	-	15,625.00
6/01/2002	15,625.00	-	15,625.00
9/01/2002	15,625.00	-	15,625.00
12/01/2002	15,625.00	-	15,625.00
3/01/2003	15,625.00	-	15,625.00
6/01/2003	15,625.00	-	15,625.00
9/01/2003	15,625.00	-	15,625.00
12/01/2003	15,625.00	-	15,625.00
3/01/2004	15,625.00	-	15,625.00
6/01/2004	15,625.00	-	15,625.00
9/01/2004	15,625.00	-	15,625.00
12/01/2004	15,625.00	-	15,625.00
3/01/2005	15,625.00	-	15,625.00
6/01/2005	15,625.00	-	15,625.00
9/01/2005	15,625.00	-	15,625.00
12/01/2005	15,625.00	-	15,625.00
3/01/2006	15,625.00	-	15,625.00
6/01/2006	15,625.00	-	15,625.00
9/01/2006	15,625.00	-	15,625.00
12/01/2006	15,625.00	-	15,625.00
3/01/2007	15,625.00	-	15,625.00
6/01/2007	15,625.00	-	15,625.00
9/01/2007	15,625.00	-	15,625.00
12/01/2007	15,625.00	-	15,625.00
3/01/2008	15,625.00	-	15,625.00
6/01/2008	15,625.00	-	15,625.00
9/01/2008	15,625.00	-	15,625.00
12/01/2008	15,625.00	-	15,625.00
3/01/2009	15,625.00	-	15,625.00
6/01/2009	15,625.00	-	15,625.00
9/01/2009	15,625.00	-	15,625.00
12/01/2009	15,625.00	-	15,625.00
3/01/2010	15,625.00	-	15,625.00
6/01/2010	15,625.00	-	15,625.00
9/01/2010	15,625.00	-	15,625.00
12/01/2010	15,625.00	-	15,625.00
3/01/2011	15,625.00	-	15,625.00
6/01/2011	15,625.00	-	15,625.00

Town of Gilbert, WV

SRF Loan

$1,250,000; 20 Years; 0% Interest Rate; 1% Administrative Fee

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/2011	15,625.00	-	15,625.00
12/01/2011	15,625.00	-	15,625.00
3/01/2012	15,625.00	-	15,625.00
6/01/2012	15,625.00	-	15,625.00
9/01/2012	15,625.00	-	15,625.00
12/01/2012	15,625.00	-	15,625.00
3/01/2013	15,625.00	-	15,625.00
6/01/2013	15,625.00	-	15,625.00
9/01/2013	15,625.00	-	15,625.00
12/01/2013	15,625.00	-	15,625.00
3/01/2014	15,625.00	-	15,625.00
6/01/2014	15,625.00	-	15,625.00
9/01/2014	15,625.00	-	15,625.00
12/01/2014	15,625.00	-	15,625.00
3/01/2015	15,625.00	-	15,625.00
6/01/2015	15,625.00	-	15,625.00
9/01/2015	15,625.00	-	15,625.00
12/01/2015	15,625.00	-	15,625.00
3/01/2016	15,625.00	-	15,625.00
6/01/2016	15,625.00	-	15,625.00
9/01/2016	15,625.00	-	15,625.00
12/01/2016	15,625.00	-	15,625.00
3/01/2017	15,625.00	-	15,625.00
6/01/2017	15,625.00	-	15,625.00
9/01/2017	15,625.00	-	15,625.00
12/01/2017	15,625.00	-	15,625.00
3/01/2018	15,625.00	-	15,625.00
6/01/2018	15,625.00	-	15,625.00
9/01/2018	15,625.00	-	15,625.00
12/01/2018	15,625.00	-	15,625.00
3/01/2019	15,625.00	-	15,625.00
6/01/2019	15,625.00	-	15,625.00
9/01/2019	15,625.00	-	15,625.00
12/01/2019	15,625.00	-	15,625.00
3/01/2020	15,625.00	-	15,625.00
Total	**1,250,000.00**	-	**1,250,000.00** *

*Plus $1,582 one-percent administrative fee paid quarterly. Total fee over the life of the loan is $126,560.

IC/WDA-1
(July 1996)

LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency");

TOWN OF GILBERT
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

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

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

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

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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

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

ARTICLE I

Definitions

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

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Council Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

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

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

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

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

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

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

ARTICLE II

The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

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

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

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

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

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan;
Issuance of Local Bonds

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

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

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

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

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

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

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local

counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available in the Infrastructure Fund funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

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

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule

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

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

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

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

(b) Covenants substantially as follows:

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

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

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xix) To the extent applicable, that the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xx) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Code) from time to time as the Authority may request; and

(xxi) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such

reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

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

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

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

ARTICLE V

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

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

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

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project,

payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

ARTICLE VII

Miscellaneous

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

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

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

(ii) termination by the Authority pursuant to Section 6.1 hereof; or

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

7.9 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Division of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

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

TOWN OF GILBERT

(SEAL)

By: Richard N. Ellis
Mayor

Attest:

Edna Perry
Its: Recorder

Date: September 29, 1998

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Lyonkosky
Director

Attest:

Barbara B Meadows
Secretary-Treasurer

Date: September 29, 1998

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

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

1. The Bonds are being issued for the purpose of _____ _____ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least _____ years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the chosen bidder received any and all addenda to the original bid documents; (v) the bid documents reflect the Project as approved by the West Virginia [Division of Environmental Protection][Bureau for Public Health]; (vi) the chosen bid includes every construction item necessary to complete the Project, or explains any deviation thereof; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (ix) the rates and charges for the System as adopted by the Issuer are sufficient to comply with the provisions of Subsection 4.1(b)(ii) of the Loan Agreement, (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably

pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this __ day of ____, 19_.

_____

By: _____

West Virginia License No. _____

[SEAL]

EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
c/o West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the "Governmental Agency"), a _____
_____.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19__, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, 19_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $_____, issued in the form of one bond registered as to principal and interest to the Authority, with interest and principal payable in installments on September 1, December 1, March 1 and June 1 of each year, beginning _____, at the rate as set forth in Exhibit A incorporated in and made a part of the Bonds.

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

EXHIBIT C

Monthly Financial Report

_____

[Name of Governmental Agency]

_____

_____

[Name of Bond Issue]

Fiscal Year - __

Report Month: _____

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

Witnesseth my signature this __ day of ____, 19_.

[Name of Governmental Agency]

By: _____
Authorized Officer

CHASFS3:58465

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	$1,250,000
Purchase Price of Bonds	$1,250,000

Principal and interest on the Bonds is payable quarterly, commencing June 1, 2020, or such earlier or later date as provided for in Section 5.03A(2) of the Bond Resolution, to and including September 1, 2038, at a rate of 1% per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. The Bonds shall be issued on a parity with the Governmental Agency's Sewerage System Revenue Bonds, Series 1998 A, issued simultaneously therewith.

The Governmental Agency shall submit its payments monthly to the West Virginia Municipal Bond Commission which will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the West Virginia Municipal Bond Commission in writing by the Authority.

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

The Governmental Agency may prepay the Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with Bonds which request must be filed at least 60 days prior to the intended date of issuance.

SCHEDULE Y

Town of Gilbert
Infrastructure Fund (1996D) Loan
Original Loan Amount: $1,250,000
Period: 40 years
Interest: 1%
Series 1998 B
Closed: 9/29/98

	Principal	Interest	Total
06/1/20	15,398.59	3,125.00	18,523.59
09/1/20	15,437.08	3,086.51	18,523.59
12/1/20	15,475.68	3,047.91	18,523.59
03/1/21	15,514.37	3,009.22	18,523.59
06/1/23	15,553.15	2,970.44	18,523.59
09/1/21	15,592.03	2,931.56	18,523.59
12/1/21	15,631.01	2,892.58	18,523.59
03/1/22	15,670.09	2,853.50	18,523.59
06/1/22	15,709.27	2,814.32	18,523.59
09/1/22	15,748.54	2,775.05	18,523.59
12/1/22	15,787.91	2,735.68	18,523.59
03/1/23	15,827.38	2,696.21	18,523.59
06/1/23	15,866.95	2,656.64	18,523.59
09/1/23	15,906.62	2,616.97	18,523.59
12/1/23	15,946.38	2,577.21	18,523.59
03/1/24	15,986.25	2,537.34	18,523.59
06/1/24	16,026.22	2,497.37	18,523.59
09/1/24	16,066.28	2,457.31	18,523.59
12/1/24	16,106.45	2,417.14	18,523.59
03/1/25	16,146.71	2,376.88	18,523.59
06/1/25	16,187.08	2,336.51	18,523.59
09/1/25	16,227.55	2,296.04	18,523.59
12/1/25	16,268.12	2,255.47	18,523.59
03/1/26	16,308.79	2,214.80	18,523.59
06/1/26	16,349.56	2,174.03	18,523.59
09/1/26	16,390.43	2,133.16	18,523.59
12/1/26	16,431.41	2,092.18	18,523.59
03/1/27	16,472.49	2,051.10	18,523.59
06/1/27	16,513.67	2,009.92	18,523.59
09/1/27	16,554.95	1,968.64	18,523.59
12/1/27	16,596.34	1,927.25	18,523.59
03/1/28	16,637.83	1,885.76	18,523.59
06/1/28	16,679.43	1,844.16	18,523.59
09/1/28	16,721.12	1,802.47	18,523.59
12/1/28	16,762.93	1,760.66	18,523.59
03/1/29	16,804.83	1,718.76	18,523.59
06/1/29	16,846.85	1,676.74	18,523.59
09/1/29	16,888.96	1,634.63	18,523.59
12/1/29	16,931.19	1,592.40	18,523.59
03/1/30	16,973.51	1,550.08	18,523.59
06/1/30	17,015.95	1,507.64	18,523.59

Town of Gilbert
Infrastructure Fund (1996D) Loan
Original Loan Amount: $1,250,000
Period: 40 years
Interest: 1%
Series 1998 B
Closed: 9/29/98

	Principal	Interest	Total
09/1/30	17,058.49	1,465.10	18,523.59
12/1/30	17,101.13	1,422.46	18,523.59
03/1/31	17,143.89	1,379.70	18,523.59
06/1/31	17,186.75	1,336.84	18,523.59
09/1/31	17,229.71	1,293.88	18,523.59
12/1/31	17,272.79	1,250.80	18,523.59
03/1/32	17,315.97	1,207.62	18,523.59
06/1/32	17,359.26	1,164.33	18,523.59
09/1/32	17,402.66	1,120.93	18,523.59
12/1/32	17,446.16	1,077.43	18,523.59
03/1/33	17,489.78	1,033.81	18,523.59
06/1/33	17,533.50	990.09	18,523.59
09/1/33	17,577.34	946.25	18,523.59
12/1/33	17,621.28	902.31	18,523.59
03/1/34	17,665.33	858.26	18,523.59
06/1/34	17,709.50	814.09	18,523.59
09/1/34	17,753.77	769.82	18,523.59
12/1/34	17,798.16	725.43	18,523.59
03/1/35	17,842.65	680.94	18,523.59
06/1/35	17,887.26	636.33	18,523.59
09/1/35	17,931.98	591.61	18,523.59
12/1/35	17,976.81	546.78	18,523.59
03/1/36	18,021.75	501.84	18,523.59
06/1/36	18,066.80	456.79	18,523.59
09/1/36	18,111.97	411.62	18,523.59
12/1/36	18,157.25	366.34	18,523.59
03/1/37	18,202.64	320.95	18,523.59
06/1/37	18,248.15	275.44	18,523.59
09/1/37	18,293.77	229.82	18,523.59
12/1/37	18,339.50	184.09	18,523.59
03/1/38	18,385.35	138.24	18,523.59
06/1/38	18,431.32	92.27	18,523.59
09/1/38	18,477.38	46.21	18,523.59
	$1,250,000.00	$120,745.66	$1,370,745.66

Average weighted maturity	31.10
NIC	0.2999426%
Aritrage Yield	0.2999426%

(August 1996)

GRANT AGREEMENT

This Grant Agreement entered into between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the Town of Gilbert (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed $1,250,000 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understanding and agreements with regard to the Grant.

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

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.

3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.

5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant available due to bid/construction/project underruns.

8. This Agreement shall be governed by the laws of the State of West Virginia.

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

TOWN OF GILBERT

By: Richard N. Ellis
Mayor

Date: Sept. 29, 1998

SEAL

ATTEST

Eddie Perry
Its: Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: Daniel B. Zgonkosky
Director

Date: Sept. 29, 1998

SEAL

ATTEST

Barbara B Meadows
Secretary - Treasurer

EXHIBIT A

The project consists of:

Contract 1

Construction of a 100,000 gallon per day wastewater treatment plant to serve the Town of Gilbert and Slabtown in Mingo County, including construction of approximately 7,000 linear feet of 8" gravity sewer, approximately 700 linear feet of 6" service lateral, approximately 1,400 linear feet of 4" service lateral, approximately 50 manholes and other appurtenances to serve approximately 75 new sewer customers along Stafford Branch Road and Guyan Avenue, and a sanitary sewer pumping station and approximately 3,000 linear feet of force main and other necessary appurtenances to convey collected wastewater to the wastewater treatment plant; and

Contract 2

Construction of a wastewater collection system to serve approximately 278 new sewer customers in the Town of Gilbert and surrounding areas along U. S. Route 52 and State Route 80, including major pump stations, 8 grinder pump stations, approximately 110 manholes, approximately 48 watertight manholes, approximately 2,065 linear feet of 2" force main, approximately 906 linear feet of 4" force main, approximately 3,228 linear feet of 6" force main, approximately 5,143 linear feet of 6" gravity sewer, approximately 18,979 linear feet of 8" gravity sewer, approximately 435 linear feet of 10" gravity sewer, approximately 3,507 linear feet of 4" service lateral, approximately 177 linear feet of 6" service lateral, and other necessary appurtenances.

The total project cost is $6,843,252.

Cecil H. Underwood, Governor

WEST VIRGINIA
MOUNTAINS OF OPPORTUNITY

WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305-0311

July 17, 1998

The Honorable Tim Rutledge
Mayor
Town of Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188

Dear Mayor Rutledge:

RE: Extension of State/Local Agreement
FY1992 Small Cities Block Grant
Town of Gilbert—Waste Water Project

This letter concerns an extension of the state/local agreement (Grant Award #93-250) between the West Virginia Development Office and the town of Gilbert for the above-referenced project.

Since all activities have not been completed, the expiration date of the agreement has been extended to June 30, 1999. Any unaudited funds remaining in the project must be included in the next audit scheduled by the State Tax Department.

Interim closeout has not been granted. Final closeout cannot be granted until all Block Grant funds have been audited and a Final Performance Report has been received.

If you should have any questions regarding this letter, please contact Jeanna Bailes at (304) 558-4010.

Sincerely,

Larry Long, Manager
Project Development

LL:jba

cc: Region II
Marcie Baker, WVDEVO
T. White, WVDEVO

Cecil H. Underwood, Governor

WEST VIRGINIA
MOUNTAINS OF OPPORTUNITY

WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305-0311

June 25, 1997

The Honorable Tim Rutledge
Mayor
Town of Gilbert
Post Office Box 188
Gilbert, West Virginia 25621-0188

Dear Mayor Rutledge:

RE: Extension of State/Local Agreement
FY1992 Small Cities Block Grant

This letter concerns an extension of the state/local agreement (Grant Award #93-250) between the West Virginia Development Office and the town of Gilbert for the above-referenced project.

Since all activities have not been completed, the expiration date of the agreement has been extended to June 30, 1998. Any unaudited funds remaining in the project must be included in the next audit scheduled by the State Tax Department.

Interim closeout has not been granted. Final closeout cannot be granted until all Block Grant funds have been audited and a Final Performance Report has been received.

If you should have any questions regarding this letter, please contact Jeanna Bailes Dorsey at (304) 558-4010.

Sincerely,

William F. Spence, PCD, for

Larry Long, Manager
Project Development

LL:jda

cc: Region II
T. White, WVDEVO

Gaston Caperton, Governor

WEST VIRGINIA
MOUNTAINS OF OPPORTUNITY

WEST VIRGINIA DEVELOPMENT OFFICE

CAPITOL COMPLEX
CHARLESTON, WV 25305-0311

June 27, 1996

RECEIVED JUL 2 1996

The Honorable Tim Rutledge
Mayor
Town of Gilbert
Post Office Box 188
Gilbert, West Virginia 25621

Dear Mayor Rutledge:

RE: **Extension of State/Local Agreement**
Fiscal Year 1992 Small Cities Block Grant
Town of Gilbert--Wastewater System Improvements Project

This letter concerns an extension of the state/local agreement (Grant Award #93-250) between the West Virginia Development Office and the town of Gilbert for the above-referenced project.

Since **all activities have not** been completed, the expiration date of the Agreement has been extended to June 30, 1997. Any unaudited funds remaining in the project must be included in the next audit scheduled by the State Tax Department.

Interim closeout **has not** been granted. Final closeout cannot be granted until all Block Grant funds have been audited.

If you should have any questions regarding this letter, please contact Jeanna Bailes Dorsey at (304) 558-4010.

Sincerely,

Larry Long, Manager
Project Development Section

LL:cs

cc: Region II
T. White

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

GASTON CAPERTON
GOVERNOR

July 26, 1993

The Honorable Tim Rutledge
Mayor
Town of Gilbert
Post Office Box 188
Gilbert, West Virginia 25621

Dear Mayor Rutledge:

On September 4, 1992, the Town of Gilbert received a commitment of $750,000 in Small Cities Block Grant (SCBG) funds for a wastewater improvements project.

The SCBG award was based upon your immediate need for funds; and, therefore, only $150,000 was made available from the FY1992 allocation, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the Town of Gilbert's ability to proceed with this worthwhile community development project, I am committing the remaining $600,000 from the FY1993 Small Cities allocation. Your existing SCBG contract will be amended to include the additional funds.

It is with great pleasure that I am able to work with you to make this improvement a reality.

Sincerely,

Gaston Caperton
Governor

GC:bss

cc: Region II

20 February 1998
HQ-GILRV

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE TOWN OF GILBERT, WEST VIRGINIA
FOR CONSTRUCTION OF THE
TOWN OF GILBERT SEWAGE TREATMENT PLANT
AND COLLECTION SYSTEM PROJECT
TOWN OF GILBERT, MINGO COUNTY, WEST VIRGINIA

THIS AGREEMENT is entered into this 20th day of March, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer and the Town of Gilbert, West Virginia (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army was authorized to provide design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Southern West Virginia pursuant to Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended;

WHEREAS, the Town of Gilbert Sewage Treatment Plant and Collection System Project in Mingo County, West Virginia, in and near the Town of Gilbert, along the Guyandotte River from approximately River Mile 104.5 to River Mile 107, has been identified as a project of the type authorized by Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for the construction of the Town of Gilbert Sewage Treatment Plant and Collection System Project (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, provides that the

Secretary of the Army shall not provide assistance in the form of design and construction for any water-related environmental infrastructure and resource protection and development projects until each Non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing the construction of the Project in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of a 300,000 gallons per day, peak wet weather flow, wastewater treatment plant including a laboratory in a pre-engineered, self framed metal building of approximately 1632 square feet to be located in Gilbert, West Virginia, along Guyan Avenue between Tamcliff and Slabtown on the left descending bank of the Guyandotte River at approximate River Mile 104.5, one sewage pump station along the Guyandotte River approximately River Mile 105.1, and a gravity sewer line and force main along Guyan Avenue (Route 80/1) in Slabtown and along Guyan Avenue (Route 80/1) to the sewage treatment plant, as described in the plans and specifications by Woolpert Consultants dated March 1, 1994, entitled "Town of Gilbert Wastewater Facilities Improvement, Wastewater Treatment Plant Contract 1, approved by the West Virginia Department of Environmental Protection on January 9, 1996, which will immediately serve approximately 300 customers in the Town of Gilbert and Slabtown areas of Mingo County, West Virginia, and shall have sufficient capacity to expand service to the Justice area of Mingo County, West Virginia, with approximately 200 additional customers, as generally described in the Scope of Work attached hereto, dated May 9, 1997. The wastewater treatment plant will incorporate continuous activated sludge technology with intermittent systems operations. It will consist of two approximately 60,000-gal cast-in-place concrete basins for wastewater to be alternately aerated, mixed and settled, from which the waste sludge will then be pumped to a 22780-gal cast-in-place concrete sludge holding basin. The clarified effluent from the reactor basins will flow into an approximately 23,700 gal cast-in-place concrete equalization basin, and then to a six module, 2-lamp-per-module ultra-violet channel for disinfection. Each reactor basin will have a 4-inch diameter air control valve in each air main supply, a course bubble aeration system, 180 cubic feet/min air blower equipment, non-clog submersible 3 gal/min waste sludge pump, 3-foot long decanter designed for the flow of the clarified effluent, control panel and motor control center. Additionally,

the construction contract will cover the construction of a sewage pump station. The pump station will contain a pump ranging in size from 3 to 20 horsepower and have the ability to pump 100 to 425 gallons per minute of raw sewage. The pump station will be 8'-0" in diameter. The pump station shall be constructed on reinforced concrete, either cast-in-place or pre-cast sections and as generally described in the Scope of Work attached hereto, dated May 9, 1997. (Capacities and measurements are approximate.)

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: advanced engineering and design costs; preconstruction engineering and design costs including Non-Federal design work as defined in Article I.K. of this Agreement for which the Government affords credit in accordance with Article IV.E. of this Agreement, subject to an audit in accordance with Article X of this Agreement; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit toward the total costs of initial construction in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "Non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.D.2. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U. S. Army Engineer for the Huntington District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins an October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "Non-Federal design work" shall mean actual design work contributing toward the design of the Project, performed by the Non-Federal Sponsor prior to the date of the Project Cooperation Agreement, dated June 19, 1995, between the Government and the Non-Federal Sponsor, for the design of the Project, as determined by the Government after consultation with the Non-Federal Sponsor. Credit for Non-Federal design work shall be subject to Articles I.B. and IV.E. of this Agre

L. The term "total construction costs for the project" shall mean total project costs as defined in Article I.B. of this Agreement.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any

applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 25 percent of the total project costs in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article and Articles V, X, and XV.A. of this Agreement, and the value of Non-Federal design work for which the Government will afford credit toward the Non-Federal Sponsor's share of total project costs in accordance with Article IV.E. of this Agreement will be less than 25 percent of total project costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of total project costs.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraph [illegible] of this Article and Articles V, X, and XV.A. of this Ag[illegible] and the value of Non-Federal design work for which the [illegible] will afford credit toward the Non-Federal Sponsor's sh[illegible] total project costs in accordance with Article IV.E. o[illegible]

Agreement, have exceeded 25 percent of total project costs, the Government shall reimburse the Non-Federal Sponsor for any such value in excess of 25 percent of total project costs subject, however, to the availability of funds and to the limitations of Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, which states that credit for lands, easements, rights-of-way, and relocations shall not exceed 25 percent of total project costs, and states further that credit for Non-federal design work shall not exceed 6 percent of total construction costs for the Project.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow

materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the

Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligation under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. In accordance with the construction schedule, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided during the period of construction pursuant to paragraphs A., B. or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS, AND CREDIT FOR NON-FEDERAL DESIGN WORK

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, and rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. The credit to be afforded the Non-Federal sponsor for such contributions may not exceed 25 percent of total project costs. However, the Non-Federal Sponsor also shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided

previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of the lands, easements, rights-of-way, relocations, or borrow and dredged material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easement, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance width paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market v shall be the amount set forth in the Non-Federal Sponsor's se appraisal, if such appraisal is approved by the Government. the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount s forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the N Federal Sponsor does not approve the Government's appra Government, after consultation with the Non-Federal Spo shall consider the Government's and the Non-Federal Spo

appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approved such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceeding, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquire by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests

taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of West Virginia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, ease[illegible] and rights-of-way for the proper disposal of dredged or ex[illegible] material shall be the costs of the improvements, as dete[illegible] the Government, subject to an audit in accordance with [illegible] X.C. of this Agreement to determine reasonableness, all[illegible] and allowability of costs. Such costs shall include, [illegible]

necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

E. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the reasonable costs of Non-Federal design work, as defined in Article I.K. of this Agreement, which is completed prior to execution of the Project Cooperation Agreement, dated June 19, 1995, between the Government and the Non-Federal Sponsor. Such credit shall be limited to the reasonable, allowable and allocable cost or value of the design services as determined by the District Engineer.

1. In the event that the Non-Federal design work is modified or revised to reflect current environmental or regulatory standards, the costs of such revisions shall be subtracted from the credit amount.

2. Where the Non-Federal Sponsor's costs for Non-Federal design work is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer and the credit shall be limited to the reasonable, allowable and allocable cost of the completed design work as determined by the District Engineer.

3. In the event that the Non-Federal Sponsor received Federal funds to perform the Non-Federal design work for which it seeks credit or has received but not yet expended such funds for Non-Federal design work, it may not receive such credit or use such funds for its share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute. The Non-Federal Sponsor may use grants from State or local agencies for the performance of any Non-Federal design work for which it seeks credit.

4. Determinations of costs eligible for reimbursement shall be made in accordance with Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments" and shall be subject to audit in accordance with Article X of this Agreement to determine the reasonableness, allowability and allocability of such costs.

5. On the effective date of this Agreement, the amount of credit for Non-Federal design work to be afforded against the Non-Federal Sponsor's required contribution towards total project costs in accordance with Article II.D of this Agreement is projected to be $90,000. This amount is an estimate subject to adjustment by the Government in its sole discretion and is not to be construed as the financial obligation of the Government or the Non-Federal Sponsor. The credit afforded the Non-Federal Sponsor for such Non-Federal design work shall not exceed 6 percent of

total construction costs for the Project. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of credit to be afforded for Non-Federal design work.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of the construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally overseas the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the construction or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of

total project costs and costs due to betterments. By 1 November of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the Non-Federal proportionate share, and of the funds the Government projects to be required form the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be $2,508,418.33, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be $509,269.58. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligation for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall present the Government with an irrevocable letter of credit acceptable to the Government for the required funds.

2. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for

construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 60 calendar days from the receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1. of the Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, Huntington District" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligation for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of the project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments, credit toward the Non-Federal Sponsor's share of total project costs provided in accordance with Article IV.E. of this Agreement, and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor, plus any credit afforded for Non-Federal design work, is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to Non-Federal Sponsor's required share of total project co costs due to any betterment provided in accordance with II.B. of this Agreement.

2. In the event of final accounting shows that the total contribution provided by the Non-Federal Sponsor, plus any credit afforded for Non-Federal design work, exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method on non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION AND MAINTENANCE (O&M)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribe by the Government in the OMRR&R Manual and any subsequent amendments thereto.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design, construction, operation, and maintenance of the Project, and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management

systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Federal Sponsor each act in an independent capacity, and

is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreements, the District Engineers shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior

the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Governments determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate construction or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the cost of cleanup and response, to include the

costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Mayor
Town of Gilbert
Post Office Box 188
Gilbert, West Virginia 25621

If to the Government:

District Engineer
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually

received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the District Engineer waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs, but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the Project as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: _____
DANA ROBERTSON
Colonel, Corps of Engineers
District Engineer
Huntington District
Corps of Engineers

DATE: 3-20-98

TOWN OF GILBERT

BY: _____
TIMOTHY RUTLEDGE
Mayor
Town of Gilbert

DATE: 3-20-98

CERTIFICATE OF AUTHORITY

I, Pam Lambert, do hereby certify that I am the principle legal officer of the TOWN OF GILBERT, that the TOWN OF GILBERT is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the TOWN OF GILBERT in connection with the TOWN OF GILBERT SEWAGE TREATMENT PLANT AND COLLECTION SYSTEM PROJECT and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the TOWN OF GILBERT have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 20th day of March 1998.

Pamela A. Lambert

PAM LAMBERT
City Attorney - 304-664-3096
Town of Gilbert

20 February 1998
HQ-GILRV

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DATE: 3-20-98

TIMOTHY RUTLEDGE
Mayor, Town of Gilbert

SCOPE OF WORK

May 9, 1997

The Government and the Non-Federal Sponsor will construct the Town of Gilbert Sewage Treatment Plant and Collection System as provided in the Project Cooperation Agreement to which this Scope of Work is attached. The work anticipated to be necessary to construct the wastewater treatment plant and laboratory, the pump station, and the gravity sewer line and force main along Guyan Avenue (Route 80/1) in Slabtown and along Guyan Avenue (Route 80/1) to the sewage treatment plant, subject to the provisions of said Project Cooperation Agreement, and to be performed by the Government and the Non-Federal Sponsor is generally described below. An itemized estimate of the cost of said anticipated work is attached.

Government:

1. Determines the lands, easements, and rights-of-way, necessary for the Project and furnishes general written descriptions of them, including maps as necessary, to the Non-Federal Sponsor.

2. Reviews documents submitted by the Non-Federal Sponsor to determine that acquisition of lands, easements, and rights-of-way have been performed in accordance with the Project Cooperation Agreement.

3. Reviews documentation submitted by the Non-Federal Sponsor to determine the appropriate credits to be afforded the Non-Federal Sponsor for acquisition of lands, easements, and rights-of-way and costs of participation in Project Coordination Team Meetings.

4. Awards, administers, prepares, and/or issues construction contract(s) and modifications thereto, including change orders, and performs all work necessary in connection therewith, including inspections, approvals and/or acceptance of construction work, materials, and equipment to be incorporated into the construction, purchase orders and subcontracts issued by prime contractors.

5. Issues Notice(s) to Proceed.

6. Maintains Government books, records, documents, and other evidence pertaining to costs and expenses incurred, prepares construction progress and completion reports, and compiles and maintains data on expenditures and obligations and statistical and graphical data on the quantity, money and

percentage of completion of the contract.

7. Prepares all documentation and coordinates all efforts required for processing claims.

8. Monitors that acceptable safety standards are maintained.

9. Coordinates activities with the Non-Federal Sponsor, solicits the Non-Federal Sponsor's comments, and provides notices, reports, and copies of documents to the Non-Federal Sponsor, as required by the Project Cooperation Agreement.

10. Appoints Project Coordination Team members to represent the Government in Team meetings and functions.

11. Prepares the OMRR&R Manual.

12. Monitors compliance with applicable Federal, State, and Local laws and regulations.

13. Conducts final accounting and furnishes the Non-Federal Sponsor with the results thereof.

Non-Federal Sponsor:

1. Acquires lands, easements, and rights-of-way necessary for construction, operation, and maintenance of the Project.

2. Prepares and submits documentation required by the Government in its sole discretion to show that the lands, easements and rights-of-way necessary for the Project have been acquired.

3. Prepares and submits documentation required by the Government in its sole discretion to determine the appropriate credits to be afforded for the acquisition of lands, easements, and rights-of-way necessary for the project and for costs of participation in Project Coordination Team Meetings.

4. Appoints Project Coordination Team member(s) to represent the Non-Federal Sponsor in Team meetings and functions.

5. Maintains books, records, documents, and other evidence to the satisfaction of the Government, in its sole discretion pertaining to costs and expenses incurred pursuant to said Project Cooperation Agreement.

Town of Gilbert Sewage Collection and Treatment System
Construction Cost by Fiscal Year

		FY-97 COST	FY-97 CONTINGENCY	FY-97 COST W/CONT.	FY-98 COST	FY-98 CONTINGENCY	FY-98 COST W/CONT.	FY 97/98 TOTAL
Real Estate Analysis - Federal								
Project Planning	1111H0A00	$ 1,000.00	$ 150.00	$ 1,150.00	$ -	$ -	$ -	$ 1,150.00
Acquisition (LS Review)	1111H0BA0	$ 5,000.00	$ 750.00	$ 5,750.00	$ -	$ -	$ -	$ 5,750.00
Appraisals (LS Review)	1111H0E00	$ 2,500.00	$ 375.00	$ 2,875.00	$ -	$ -	$ -	$ 2,875.00
PL 91 646 Assist (LS Review)	1111H0DA0	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Related Administration	1111H0DA0	$ 2,000.00	$ 300.00	$ 2,300.00	$ -	$ -	$ -	$ 2,300.00
Land Payments (LS Review)	1111H0A00	$ 2,000.00	$ 300.00	$ 2,300.00	$ -	$ -	$ -	$ 2,300.00
PL 91 646 Rmnts (LS Review)	1111H0DA0	$ -	$ -	$ -	$ -	$ -	$ -	$ -
LERRD Crediting	1111H0A00	$ 3,000.00	$ 450.00	$ 3,450.00	$ -	$ -	$ -	$ 3,450.00
Subtotal		$ 15,500.00	$ 2,325.00	$ 17,825.00	$ -	$ -	$ -	$ 17,825.00
Real Estate Analysis - Sponsor								
Acquisitions (By LS)		$ 4,000.00	$ 600.00	$ 4,600.00	$ -	$ -	$ -	$ 4,600.00
Appraisals (By LS)		$ 1,000.00	$ 150.00	$ 1,150.00	$ -	$ -	$ -	$ 1,150.00
PL 91 646 Assist (By LS)		$ -	$ -	$ -	$ -	$ -	$ -	$ -
Rights of Entry (By LS)		$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Related Administration		$ 1,000.00	$ 150.00	$ 1,150.00	$ -	$ -	$ -	$ 1,150.00
Subtotal		$ 6,000.00	$ 900.00	$ 6,900.00	$ -	$ -	$ -	$ 6,900.00
					$ -	$ -	$ -	$ -
Land Payments (By LS)		$ 17,260.00	$ 3,675.00	$ 20,935.00	$ -	$ -	$ -	$ 20,935.00
PL 91 646 Rmnts. (By LS)		$ -	$ -	$ -	$ -	$ -	$ -	$ -
Subtotal		$ 17,260.00	$ 3,675.00	$ 20,935.00	$ -	$ -	$ -	$ 20,935.00
Project Management								
Project Coordination and Public Involvement	1111H0C00	$ 8,000.00	$ 2,000.00	$ 10,000.00	$ 15,000.00	$ 3,750.00	$ 18,750.00	$ 28,750.00
		$ 1,250.00	$ 312.50	$ 1,562.50	$ 3,750.00	$ 937.50	$ 4,687.50	$ 6,250.00
Subtotal		$ 9,250.00	$ 2,312.50	$ 11,562.50	$ 18,750.00	$ 4,687.50	$ 23,437.50	$ 35,000.00
Engineering Division								
E&D After Award	1111H0CA0	$ -	$ -	$ -	$ 2,782.00	$ 556.40	$ 3,338.40	$ 3,338.40
E&D After Award	1111H0BA0	$ -	$ -	$ -	$ 7,385.00	$ 1,477.00	$ 8,862.00	$ 8,862.00
Eng. Coordination during A/O/A	1111H0BA0	$ 1,488.00	$ 297.60	$ 1,785.60	$ -	$ -	$ -	$ 1,785.60
Fair and Reasonable Cost Estimate	1111H0CA0	$ 18,358.61	$ 3,671.72	$ 22,030.33	$ -	$ -	$ -	$ 22,030.33
Subtotal		$ 19,846.61	$ 3,969.32	$ 23,815.93	$ -	$ -	$ -	$ 36,016.33
Construction Division								
Con[illegible] [illegible]ion Oversight - District	1111M1B00	$ 12,000.00	$ 1,800.00	$ 13,800.00	$ 58,000.00	$ 8,700.00	$ 66,700.00	$ 80,500.00
[illegible] [illegible]n Oversight - Field	1111M1HA0	$ 500.00	$ 75.00	$ 575.00	$ 4,500.00	$ 675.00	$ 5,175.00	$ 5,750.00
Subtotal		$ 12,500.00	$ 1,875.00	$ 14,375.00	$ 62,500.00	$ 9,375.00	$ 71,875.00	$ 86,250.00

Town of Gilbert Sewage Coll. ' .n and Treatment System
Construction Cost by Fiscal Year

		FY-97 COST	FY-97 CONTINGENCY	FY-97 COST W/CONT.	FY-98 COST	FY-98 CONTINGENCY	FY-98 COST W/CONT.	FY 97/98 TOTAL
Contracting Division								
Contract A/O/A	111P0A00	$ 4,000.00	$ 600.00	$ 4,600.00	$ 1,000.00	$ 150.00	$ 1,150.00	$ 5,750.00
Subtotal		$ 4,000.00	$ 600.00	$ 4,600.00	$ 1,000.00	$ 150.00	$ 1,150.00	$ 5,750.00
Cost Shared Construction Labor Cost		$ 61,096.61	$ 11,081.82	$ 72,178.43	$ 82,250.00	$ 14,212.50	$ 96,462.50	$ 180,841.33
Estimated Real Estate Sponsor Credit								$ 27,835.00
Sponsor Design Credit								$ 90,000.00
Estimated Constru 'ion Cost Incl. Contingencies								$ 2,327,677.00
Total Construction Project Cost								$ 2,508,418.33
Total Federal Share								$ 1,881,313.76
Total Non-Federal Share								$ 627,104.58
Total Non-Federal Share Minus Credits								$ 509,269.58

Matewan Banks

The Money Center
249 Second Avenue
Williamson, West Virginia 25661-0100
Phone (304) 235-1660, Fax (304) 235-1670

September 29, 1998

Town of Gilbert
P.O. Box 188
Gilbert, West Virginia 25621-0188

RE: $750,000 Irrevocable Letter of Credit

Ladies and Gentlemen:

At your request and on your instruction, we, the undersigned bank (the "Bank"), hereby establish in favor of the U.S. Army Engineer District, Huntington (the "Beneficiary") an irrevocable letter of credit in the amount of $750,000 (the "Stated Amount") in the form attached as Exhibit I hereto. The Beneficiary may draw upon such letter of credit from time to time as hereinafter set forth, but the aggregate amount outstanding at any time may not exceed the Stated Amount.

This letter of credit is extended on your behalf for the purpose of providing funds for your matching share, of the project designated as "Contract One." It is our understanding that this letter of credit was authorized by the Bond and Letter of Credit Ordinance enacted by the Council of the Town of Gilbert on September 14, 1998 (the "LOC Ordinance"). Capitalized terms used and not otherwise defined in this letter shall have the respective meanings given them in the LOC Ordinance. This letter of credit agreement shall supersede the letter of credit agreement dated November 30, 1995, between the Bank and the Town and the amendment to that letter of credit agreement dated August 29, 1997.

The letter of credit is irrevocable as set forth therein. The Beneficiary may make draws upon the letter of credit by presenting to the Bank a letter substantially in the form of Exhibit II hereto. The terms of the letter of credit shall govern the method and timing of draws thereon, the Banks's responsibilities with respect to payment on such draws, and the expiration of the letter of credit.

The Town's obligation to repay the Bank for any draw upon the letter of credit shall be evidenced by its sewerage system revenue note (the "Note") in the stated principal amount of $750,000, in substantially the form attached as Exhibit III hereto. Notwithstanding said stated principal amount, the Note shall evidence only the outstanding indebtedness reflected on the Record of Advances and Payments attached hereto. Each advance shall bear interest at such rate, payable at such times, and the Note shall mature and

be subject to prepayment and such other terms and provisions, as shall be described in Exhibit III.

All documents presented to us in connection with any demand for a draw upon the letter of credit, as well as all notices and other communications to us in respect of this letter or the letter of credit, shall be in writing and addressed and presented to us at our above address. Such documents, notices and other communications shall be personally delivered to us.

This letter sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement except only Exhibits I, II and III hereto and the LOC Ordinance. Upon execution by the Mayor of the Town of the duplicate letter attached hereto and return of such letter to us, and the Note, this letter shall become an agreement between the Bank and the Town, governed by the laws of the State of West Virginia.

Very truly yours,

THE MATEWAN NATIONAL BANK

By: Granville White
Its Vice President

Accepted this 29th day of September, 1998.

THE TOWN OF GILBERT, WEST VIRGINIA

By: Richard N. Ellis
Mayor

EXHIBIT I

[LETTERHEAD OF THE MATEWAN NATIONAL BANK]

STRAIGHT IRREVOCABLE LETTER OF CREDIT

The Matewan National Bank (hereinafter referred to as the "Bank") grants a straight irrevocable letter of credit (hereinafter referred to as the "Letter of Credit") for the amount of $750,000.00 to the U.S. Army Engineer District, Huntington (hereinafter referred to as the "Beneficiary") on behalf of the Town of Gilbert, WV (hereinafter referred to as the "Guarantor"), for the Town of Gilbert Sewage Collection and Treatment System, Gilbert, WV (hereinafter referred to as the "Project"). It is understood that this Letter of Credit cannot be amended, revoked, cancelled, reduced, or otherwise affected without the prior express written consent of the Beneficiary.

The Beneficiary can demand payment from the Bank up to an amount of $750,000.00 or fractions thereof, up to said amount. This Letter of Credit will only be considered terminated once the withdrawal of $750,000.00 has been completed, or by written agreement between the Beneficiary and the Guarantor, or upon completion of the Project as solely determined by the Beneficiary.

The Beneficiary has the exclusive right to demand payment of any sums under the terms of this Letter of Credit from the Bank. The demand shall be made by presentation of a letter, either in person or by certified mail to the Bank, similar to Attachment A signed by the District Engineer, U.S. Army Engineer District, Huntington.

The Bank's payment of the demand shall be made by means of a certified check payable to "FAO, USAED, Huntington". Payment shall be made immediately if the demand is made in person or within one Bank working day after the Bank receives the demand via certified mail. The Beneficiary names the District Engineer, U.S. Army Engineer District, Huntington, or his officially designated representative, as the official authorized to make demand upon the Bank and the official to receive the certified check either in person or by certified mail.

Nothing in this Letter of Credit will be construed as making the Beneficiary responsible in any manner for any failure of the Guarantor to provide adequate assurances to the Bank.

The parties hereto have accepted this Letter of Credit and its terms on this the _____ day of September, 1998.

THE BANK

BY: _____
TRANQUILLA WHITT
Vice President - Commercial Lending
The Matewan National Bank
P.O. Box 100
Williamson, WV 25661

THE BENEFICIARY

BY: _____
DANA ROBERTSON
Colonel, District Engineer
U.S. Army Engineer District,
Huntington

Exhibit II

[Sample Draw Letter -- Attachment A to Letter of Credit]

[Letterhead of the Beneficiary]

The Matewan National Bank
P.O. Box 100
Williamson, WV 25661
Attention: Vice-President
Commercial Lending

Dear _____:

Pursuant to the irrevocable letter of credit number 8180937 dated September __, 1998, issued by The Matewan National Bank to the U. S. Army Engineer District, Huntington, for the Town of Gilbert, it is requested that a draft be drawn upon this Letter of Credit in the amount of $_____. This request is pursuant to the Project Cooperation Agreement entered into on March 20, 1998, between the Town of Gilbert and the Department of the Army for the design and construction of the sewerage treatment plant for the Town of Gilbert.

The check should be made payable to "FAO, USAED, Huntington" and mailed to the attention of _____ at the address above.

Any questions concerning this request may be addressed to _____ at (304) 529-____ or to _____ at (304) 529-____.

U. S. ARMY ENGINEER DISTRICT,
HUNTINGTON

BY:_____
DANA ROBERTSON
Colonel, District Engineer
U.S. Army Engineer District,
Huntington

EXHIBIT III

United States of America
State of West Virginia
Town of Gilbert
Sewerage System Revenue Note
Series 1998
Number R-1
$750,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Town"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to The Matewan National Bank, Williamson, West Virginia (the "Owner"), or registered assigns, the sum of Seven Hundred Fifty Thousand Dollars ($750,000), or such lesser sum as shall be reflected by the Record of Advances and Payments attached hereto, on demand. Notwithstanding any provision of this Note to the contrary, this Note shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto, provided that the Record of Advances and Payments shall reflect the specific Project for which each advance or payment is made. Interest shall accrue only on the amount of the outstanding indebtedness from the actual date of each advance or payment, as the case may be, as listed on said Record of Advances and Payments and shall cease to accrue on the amount hereof outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. Such interest shall be at the rate of two percent per annum above the prime rate as published from time to time in The Wall Street Journal, adjusted daily on the basis of a 365-day year. Such interest is payable on the date on which the entire principal amount of this Note is repaid, or, if a portion of the outstanding principal amount of this Note is repaid in advance of the repayment of the remainder of the outstanding principal amount, all interest accrued on such portion shall be paid at the time of repayment in advance of such portion. The Registrar, as hereinafter defined, shall notify the Town of the amount of interest so accrued. This Note shall be payable as to principal upon surrender at the principal office of The Matewan National Bank, Williamson, West Virginia, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America; provided, that, except in the case the Note is being prepaid in full and either (i) the Town's notice of prepayment requires surrender or (ii) the Letter of Credit, as hereinafter defined, has expired, any payment of principal prior to the maturity of this Note as provided by the Ordinance, as hereinafter defined, shall be recorded on the Record of Advances and Payments attached hereto, and this Note shall be returned to the Owner. Prepayments of the principal of this Note may be made upon two (2) days' notice to the Owner. Any such prepayment shall also be reflected on the Record of Advances and Payments attached hereto, and interest shall cease to accrue thereon.

This Note is issued pursuant to the Bond and Note Ordinance enacted by the

Council of the Town on September 14, 1998 (the "Ordinance"), to evidence the Town's obligation to repay any draw upon a letter of credit (the "Letter of Credit") by the U.S. Army Engineer District, Huntington (the "Beneficiary") from The Matewan National Bank, Williamson, West Virginia (the "Bank"). This Note was issued to provide funds for the acquisition and construction of a sewerage treatment plant for the Town to the extent grant proceeds and other funds are not timely available therefor.

This Note is issued, in addition to the Ordinance, under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and is subject to all the terms and provisions of said Ordinance and said Act. The principal of and interest on this Note are payable from a portion of the proceeds of the Infrastructure Grant. The principal of and interest on this Note are further payable from and secured by a lien on the revenues derived from the operation of the sewerage system of the Town; provided, that such lien on the revenues is junior, subordinate and inferior to the lien on such net revenues created on behalf of the Bonds, as set forth in the Ordinance.

This Note does not constitute a corporate indebtedness of the Town within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Town be obligated to pay the same or the interest hereon except from the special fund provided from the proceeds of the Infrastructure Grant and the net revenues derived from the operation of said sewerage system. Under the Ordinance, the Town has entered into certain covenants with the Owner, for the terms of which reference is made to said Ordinance. Remedies provided the Owner are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable, as provided in the Ordinance, only upon the books of the Town at the office of the Registrar by the Owner in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to said Registrar duly executed by the Owner or his duly authorized attorney. Upon transfer hereof, there shall be issued another fully registered Note or fully registered Notes of the aggregate stated principal amount equal to the stated principal amount thereof but evidencing only the indebtedness reflected on the Record of Advances and Payments attached hereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount hereof as reflected on the Record of Advances and Payments attached hereto.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note exist, have happened and have been performed in due time, form and manner as required by law, and that this Note, together with all other obligations of the Town, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that the proceeds of a portion of the Infrastructure Grant and the net

revenues of the sewerage system of the Town have been pledged to and will be set aside into a special fund by the Town for, and will be sufficient for, the payment of the principal and interest on this Note.

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

IN WITNESS WHEREOF, the Town of Gilbert, West Virginia, has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by the Recorder, all as of the ___ day of _____, 1998.

_____
Mayor

[SEAL]

Attest:

_____
Recorder

CERTIFICATE OF AUTHENTICATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name set forth above on the date set forth below.

Date: _____

_____,
as Registrar

By _____
Its Authorized Officer

RECORD OF ADVANCES AND PAYMENTS*

Date	Amount Advanced	Principal Payment	Project	Outstanding** Balance	Authorized Officer

* To be completed upon each draw upon or repayment on the Letter of Credit, with the specific project for which the advance or payment is being made being noted

** Not to exceed $_____ at any one time.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____ the Sewerage System Revenue Note, Series 1998, dated _____, 1998, of the Town of Gilbert, West Virginia, and does hereby irrevocably constitute and appoint _____, attorney to transfer said Note on the books of said Town with full power of substitution in the premises.

_____

DATED: _____

IN THE PRESENCE OF: _____

Matewan Banks

Matewan Banks
P.O. Box 100, Second Ave. and Vinson St.
Williamson, West Virginia 25661-0100
Phone (304) 235-1544 Fax (304) 235-7302

STRAIGHT IRREVOCABLE LETTER OF CREDIT

The Matewan National Bank (hereinafter referred to as the "Bank") grants a straight irrevocable letter of credit (hereinafter referred to as the "Letter of Credit") for the amount of $750,000.00 to the U.S. Army Engineer District, Huntington (hereinafter referred to as the "Beneficiary") on behalf of the Town of Gilbert, WV (hereinafter referred to as the "Guarantor"), for the Town of Gilbert Sewage Collection and Treatment System, Gilbert, WV (hereinafter referred to as the "Project"). It is understood that this Letter of Credit cannot be amended, revoked, cancelled, reduced, or otherwise affected without the prior express written consent of the Beneficiary.

"SPECIMEN"

The Beneficiary can demand payment from the Bank up to an amount of $750,000.00 or fractions thereof, up to said amount. This Letter of credit will only be considered terminated once the withdrawal of $750,000.00 has been completed, or by written agreement between the Beneficiary and the Guarantor, or upon completion of the Project as solely determined by the Beneficiary.

The Beneficiary has the exclusive right to demand payment of any sums under the terms of this Letter of Credit from the Bank. The demand shall be made by presentation of a letter, either in person or by certified mail to the Bank, similar to Attachment A signed by the District Engineer, U.S. Army Engineer District, Huntington.

The Bank's payment of the demand shall be made by means of a certified check payable to "FAO, USAED, Huntington". Payment shall be made immediately if the demand is made in person or within one Bank working day after the Bank receives the demand via certified mail. The Beneficiary names the District Engineer, U.S. Army Engineer District, Huntington, or his officially designated representative, as the official authorized to make demand upon the Bank and the official to receive the certified check either in person or by certified mail.

Nothing in this Letter of Credit will be construed as making the Beneficiary responsible in any manner for any failure of the guarantor to provide adequate assurances to the Bank.

The parties hereto have accepted this Letter of Credit and its terms on this the 29th day of September, 1998.

THE BANK

"SPECIMEN"

BY: _____
TRANQUILLA WHITT
Vice President - Commercial Lending
The Matewan National Bank
P.O. Box 100
Williamson, WV 25661

THE BENEFICIARY

"SPECIMEN"

BY: _____
DANA ROBERTSON
Colonel, District Engineer
U.S. Army Engineer District,
Huntington

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO
ATTENTION OF:

September 29, 1998

Real Estate Division
Acquisition Branch

Mayor Richard Ellis
Town of Gilbert
P.O. Box 188
Gilbert, West Virginia 25621-0188

Tranquilla Whitt
Vice President, Commercial Lending
Matewan National Bank
P.O. Box 100
Williamson, West Virginia 25661

Dear Mayor Ellis and Ms. Whitt:

Pursuant to your request, the U.S. Army Engineer District, Huntington ("USAED"), hereby provides its written consent to the cancellation of (i) the irrevocable letter of credit dated November 30, 1995 and issued by Matewan National Bank (the "Bank") for the benefit of the Department of the Army, acting by and through the Assistant Secretary of the Army (Civil Works), in the amount of $755,000; (ii) the Straight Irrevocable Letter of Credit dated February 14, 1998, for the benefit of USAED in the amount of $509,270; and (iii) to the extent it was not replaced or superseded by the February 14, 1998 letter of credit, the Straight Irrevocable Letter of Credit dated September 8, 1997, for the benefit of USAED in the amount of $509,270.

This consent is made with and in reliance upon the understanding that the Town of Gilbert (the "Town") and the Bank will enter into a new letter of credit agreement in the amount of $750,000 naming USAED as beneficiary in connection with acquisition and construction of the Town's sewerage treatment plant.

You may use this letter as evidence of USAED's consent the Mayor is required to obtained by Section 4.01 of the Town's Bond and Letter of Credit Ordinance enacted on September 14, 1998.

U.S. ARMY ENGINEER DISTRICT,
HUNTINGTON

BY: _____
DANA ROBERTSON
Colonel, District Engineer
U.S. Army Engineer District,
Huntington

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND SERIES 1998 B

CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER; RATES
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. LOAN AGREEMENT
12. TRUTH AND ACCURACY
13. SPECIMEN BONDS AND NOTE
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. IRS INFORMATION RETURN
18. CONFLICT OF INTEREST
19. CLEAN WATER ACT
20. COUNTERPARTS
21. YEAR 2000 COMPLIANCE

We, the undersigned MAYOR and the undersigned RECORDER of the Town of Gilbert, West Virginia (herein called the "Town"), and the undersigned ATTORNEY for the Town, hereby certify in connection with the fully registered Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A, numbered AR-1, dated the date hereof, in the principal amount of $1,250,000 and bearing no interest (the "Series 1998 A Bonds"), and the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B, numbered BR-1, dated the date hereof, in the principal amount of $1,250,000 bearing interest at the rate of one percent (1.00%) per annum (the "Series 1998 B Bonds") (the "Series 1998 A Bonds," together with the "Series 1998 B Bonds," herein referred to as the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this Certificate and not otherwise defined shall have the same meaning as in the Bond Ordinance duly enacted

by the Council (the "Council") of the Town on September 14, 1998, effective September 14, 1998, and the Supplemental Resolution adopted September 14, 1998, relating to the Bonds (collectively, the "Ordinance"), the Loan Agreement entered into among the Town, the Division of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated September 2, 1998, for the Series 1998 A Bonds, and the Loan Agreement entered into among the Town and the Authority, dated September 29, 1998, for the Series 1998 B Bonds (collectively, the "Loan Agreements").

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Bonds; nor questioning the proceedings and authority by which the Council of the Town authorized the issuance and sale of 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 Town or the title of the members or officers of the Town or of the Council thereof to their respective offices; nor questioning the acquisition and construction of a sewerage collection and treatment system of the Town financed in part by the proceeds of sale of the Bonds (herein called the "Project"), nor operation by the Town of the Project (the Project and any further extensions, additions, improvements or betterments thereto, herein collectively called the "System"), nor challenging the collection or use of the revenues of the System or the pledge of the revenues to the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for the construction and acquisition of the Project, operation of the System, and issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for 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 Town since September 2, 1998. There are no bonds, notes or other obligations of the Town which are secured by a lien on the revenues of the system. The Bonds are being issued for the purpose of paying costs of acquisition and construction of a sewerage collection treatment system of the Town. The Series 1998 A Bonds and Series 1998 B Bonds are being issued as first lien bonds and will be on a parity as to liens, pledge and source of and security for payment on the Net Revenues of the System. The Grants remain in full force and effect.

5. SIGNATURES: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and serving officers of the Town as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Bonds for the Town. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Town.

6. PUBLIC SERVICE COMMISSION ORDER; RATES: The undersigned Counsel hereby certifies that the Town has filed information with the Public Service Commission (the "PSC") and taken all other action required to maintain the Recommended Decision in Case No. 94-0305-S-CN, granting a Certificate of Convenience and Necessity and approving the sale of the Bonds, which became the Final Order of the PSC on November 21, 1994, as modified and revised by the Commission Order Conditionally Approving Additional Funding, dated January 23, 1998, and by the Commission Order Approving Additional Increase in Project Costs and Revised Financing, dated September 23, 1998, in full force and effect, and has taken all other action required by applicable law. The rates were enacted by a rate ordinance enacted on November 10, 1997, and the Town has complied with all requirements of the Public Service Commission to make the rates valid and effective and such rates are in full force and effect. The time for appeal of such rate ordinance has expired and there has been no appeal thereof.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Town is the "Town of Gilbert", and it is a municipal corporation of the State of West Virginia in Mingo County of said State. The governing body of the Town is its Common Council, consisting of four Council members and the Mayor. The Recorder is the ex-officio Clerk of the Common Council. The names and dates of commencement and termination of terms of office for all such officials during these Bond proceedings, including current terms, are listed below as well as the members of the Sanitary Board:

Office	Name	Date Of Commencement Of Office	Date Of Termination Of Office
Mayor	Richard Ellis	July 1, 1998	June 30, 2001
Recorder	Eddie Perry	August 17, 1998	June 30, 2001
Council Member	Randy Livingood	July 1, 1997	June 30, 2001
Council Member	Wendell Hatfield	July 1, 1997	June 30, 2001
Council Member	Curtis Lester	July 1, 1997	June 30, 2001
Council Member	William Daniels	July 1, 1997	June 30, 2001

Sanitary Board Members

Mayor Richard Ellis	Ex-officio Chairman
William Peak	Sec/Tres.
Larry Mauke	Member and P.E.

The duly appointed and acting Town Attorney is Pamela A. Lambert, Esquire, Gilbert, West Virginia.

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

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

10. INSURANCE: The Town will maintain or, as appropriate, will require all contractors to maintain 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.

11. LOAN AGREEMENTS: As of the date hereof, (i) the representations of the Town contained in the Loan Agreements are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreements do not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Town has occurred since September 2, 1998, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Town is in compliance with the Loan Agreements.

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

13. SPECIMEN BONDS AND NOTE: Attached hereto as Exhibit A and Exhibit B are specimens of the Bonds and attached as Exhibit C is a specimen of the

Town's Sewerage System Revenue Note, Series 1998. Except as to execution and authentication, these specimens are identical in all respects with such Bonds this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

14. BOND PROCEEDS: On the date hereof, the Town received $62,500.00 from the Authority and the DEP, being a portion of the principal amount of the Series 1998 A Bonds, and $262,099.00 from the Authority and the Infrastructure Council, being a portion of the principal amount of the Series 1998 B Bonds, and more than a de minimus amount of the proceeds of each series of Bonds. The balance of the principal amount of each series of Bonds will be advanced to the Town from time to time as acquisition and construction of the Project progresses.

15. PRIVATE USE OF FACILITIES: The Town shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Series 1998 B Bonds and the interest thereon. Less than 10% of the proceeds of the Series 1998 B Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Town) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Series 1998 B Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Series 1998 B Bonds, including the disproportionate related business use of the proceeds of the Series 1998 B Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Series 1998 B Bonds. None of the proceeds of the issue of the Series 1998 B Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

16. NO FEDERAL GUARANTY: The Series 1998 B Bonds are not and will be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign a properly completed IRS Form 8038-G for the Series 1998 B Bonds and will cause each such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Philadelphia, Pennsylvania.

18. CONFLICT OF INTEREST: No officer or employee of the Town has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Town or in the sale of any land, materials, supplies or services to the Town or to any contractor supplying the Town, 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.

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

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

21. YEAR 2000 COMPLIANCE: The Town represents that it has undertaken or will undertake an investigation to determine whether the operations of the System, including but not limited to any billing, collection and inventory computer programs of the System and any electronic or mechanical components of the System's wastewater collection and treatment facilities, are Year 2000 Compliant. The Town further represents that if it determines as a result of this investigation that any Mission-Critical Component of the System is not Year 2000 Compliant, the Town (i) will take timely and affirmative action to repair or replace any such component, and (ii) will perform adequate testing to ensure the sound operation and Year 2000 Compliant status of the repaired or replaced component. For purpose of this paragraph, "Year 2000 Compliant" means, with respect to the information technology the Town uses or will use in the operation of the System (including any date-sensitive microprocessors embedded in electronic or mechanical components of the System), the information technology is designed to be used prior to, during and after calendar Year 2000 A.D., and the information technology used during each such time period will accurately receive, provide and process data-time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, including the years 1999 and 2000, and leap-year calculations, and will not malfunction, cease to function, or provide invalid or

incorrect results as a result of date-time data. For purposes of this paragraph, "Mission-Critical Component" means any component of the System that would be critical to (a) the System's continued operation after January 1, 2000; (b) the Town's ability to continue to bill its customers and collect amounts billed from those customers after January 1, 2000; or (c) the Town's ability to make all principal and interest payments for the Bonds contemplated by the Ordinance as and when they become due.

[Remainder of Page Intentionally Left Blank]

WITNESS our signatures and the official corporate seal of the Town of Gilbert, West Virginia on this 29th day of September, 1998.

[SEAL]

Signature	Official Title
Richard N. Ellis	Mayor
Eddie Perry	Recorder
Pamela A. Lambert	Attorney

CHASFS3:129241

NUMBER

AR-1

EXHIBIT A

"SPECIMEN"

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF MINGO
TOWN OF GILBERT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1998 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $1,250,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation of the State of West Virginia, in Mingo County of said State (the "Town"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority"), or registered assigns, the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning June 1, 2000, as set forth on the "Schedule of Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A. The SRF Administrative Fee (as defined in the hereinafter described Bond Ordinance) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year,beginning June 1, 2000, as set forth on Exhibit B attached hereto.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest, if any, shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning June 1, 2000, at the rate of zero percent (0%) per annum. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent. The interest on this Bond, if any, is payable by check or draft mailed to the Authority at the address as it appears on the books of the Registrar on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable, so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated September 2, 1998, among the Authority, the DEP and the Town.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater collection facility constituting the sewer system of the Town (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Town on the 14th day of September, 1998, and a Supplemental Resolution adopted by the Town on the 14th day of September, 1998 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE TOWN'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B, ISSUED CONCURRENTLY THEREWITH (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate

indebtedness of the Town within the meaning of any constitutional or statutory provisions or limitations, nor shall the Town be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Town 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 to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Town has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of The Matewan National Bank, Williamson, West Virginia (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Town, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the

System has been pledged to and will be set aside into said special fund by the Town for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of this page intentionally left blank]

NUMBER

AR-1

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 or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the 29th day of September, 1998.

[SEAL]

Richard D. Ellis
Mayor

SPECIMEN

ATTEST:

Eddie Perry
Recorder

NUMBER

AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

THE MATEWAN NATIONAL BANK,
as Registrar

SPECIMEN

By _____
Its Authorized Officer

Dated: September 29, 1998

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $62,500.00	9/29/98	(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

SRF Loan
$1,250,000; 20 Years; 0% Interest Rate; 1% Administrative Fee

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
3/01/2000	-	-	-
6/01/2000	15,625.00	-	15,625.00
9/01/2000	15,625.00	-	15,625.00
12/01/2000	15,625.00	-	15,625.00
3/01/2001	15,625.00	-	15,625.00
6/01/2001	15,625.00	-	15,625.00
9/01/2001	15,625.00	-	15,625.00
12/01/2001	15,625.00	-	15,625.00
3/01/2002	15,625.00	-	15,625.00
6/01/2002	15,625.00	-	15,625.00
9/01/2002	15,625.00	-	15,625.00
12/01/2002	15,625.00	-	15,625.00
3/01/2003	15,625.00	-	15,625.00
6/01/2003	15,625.00	-	15,625.00
9/01/2003	15,625.00	-	15,625.00
12/01/2003	15,625.00	-	15,625.00
3/01/2004	15,625.00	-	15,625.00
6/01/2004	15,625.00	-	15,625.00
9/01/2004	15,625.00	-	15,625.00
12/01/2004	15,625.00	-	15,625.00
3/01/2005	15,625.00	-	15,625.00
6/01/2005	15,625.00	-	15,625.00
9/01/2005	15,625.00	-	15,625.00
12/01/2005	15,625.00	-	15,625.00
3/01/2006	15,625.00	-	15,625.00
6/01/2006	15,625.00	-	15,625.00
9/01/2006	15,625.00	-	15,625.00
12/01/2006	15,625.00	-	15,625.00
3/01/2007	15,625.00	-	15,625.00
6/01/2007	15,625.00	-	15,625.00
9/01/2007	15,625.00	-	15,625.00
12/01/2007	15,625.00	-	15,625.00
3/01/2008	15,625.00	-	15,625.00
6/01/2008	15,625.00	-	15,625.00
9/01/2008	15,625.00	-	15,625.00
12/01/2008	15,625.00	-	15,625.00
3/01/2009	15,625.00	-	15,625.00
6/01/2009	15,625.00	-	15,625.00
9/01/2009	15,625.00	-	15,625.00
12/01/2009	15,625.00	-	15,625.00
3/01/2010	15,625.00	-	15,625.00
6/01/2010	15,625.00	-	15,625.00
9/01/2010	15,625.00	-	15,625.00
12/01/2010	15,625.00	-	15,625.00
3/01/2011	15,625.00	-	15,625.00
6/01/2011	15,625.00	-	15,625.00

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

SRF Loan
$1,250,000; 20 Years; 0% Interest Rate; 1% Administrative Fee

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/2011	15,625.00	-	15,625.00
12/01/2011	15,625.00	-	15,625.00
3/01/2012	15,625.00	-	15,625.00
6/01/2012	15,625.00	-	15,625.00
9/01/2012	15,625.00	-	15,625.00
12/01/2012	15,625.00	-	15,625.00
3/01/2013	15,625.00	-	15,625.00
6/01/2013	15,625.00	-	15,625.00
9/01/2013	15,625.00	-	15,625.00
12/01/2013	15,625.00	-	15,625.00
3/01/2014	15,625.00	-	15,625.00
6/01/2014	15,625.00	-	15,625.00
9/01/2014	15,625.00	-	15,625.00
12/01/2014	15,625.00	-	15,625.00
3/01/2015	15,625.00	-	15,625.00
6/01/2015	15,625.00	-	15,625.00
9/01/2015	15,625.00	-	15,625.00
12/01/2015	15,625.00	-	15,625.00
3/01/2016	15,625.00	-	15,625.00
6/01/2016	15,625.00	-	15,625.00
9/01/2016	15,625.00	-	15,625.00
12/01/2016	15,625.00	-	15,625.00
3/01/2017	15,625.00	-	15,625.00
6/01/2017	15,625.00	-	15,625.00
9/01/2017	15,625.00	-	15,625.00
12/01/2017	15,625.00	-	15,625.00
3/01/2018	15,625.00	-	15,625.00
6/01/2018	15,625.00	-	15,625.00
9/01/2018	15,625.00	-	15,625.00
12/01/2018	15,625.00	-	15,625.00
3/01/2019	15,625.00	-	15,625.00
6/01/2019	15,625.00	-	15,625.00
9/01/2019	15,625.00	-	15,625.00
12/01/2019	15,625.00	-	15,625.00
3/01/2020	15,625.00	-	15,625.00
Total	**1,250,000.00**	-	**1,250,000.00** *

*Plus $1,582 one-percent administrative fee paid quarterly. Total fee over the life of the loan is $126,560.

NUMBER

AR-1

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Town, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

NUMBER

BR-1

EXHIBIT B

"SPECIMEN"

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF MINGO
TOWN OF GILBERT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1998 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1 $1,250,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation of the State of West Virginia, in Mingo County of said State (the "Town"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning June 1, 2020, as set forth on the "Schedule of Debt Service" attached as Exhibit B hereto and incorporated herein by reference, or such earlier or later date as provided for in Section 5.03A(2) of the hereinafter-defined Ordinance.

Interest on this Bond shall be zero (0%) percent from the date hereof until the date of completion of the Project, and after such date, interest, if any, shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning June 1, 2020, or such earlier or later date as provided for in Section 5.03A(2) of the hereinafter-defined Ordinance, at the rate of one percent (1%) per annum.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent. The interest on this Bond, if any, is payable by check or draft mailed to the Authority at the address as it appears on the books of the Registrar on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable, so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated September 29, 1998, between the Authority, the Infrastructure Council and the Town.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater collection facility constituting the sewer system of the Town (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Town on the 14th day of September, 1998, and a Supplemental Resolution adopted by the Town on the 14th day of September, 1998 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE TOWN'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, ISSUED CONCURRENTLY THEREWITH (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Town within the meaning of any constitutional or statutory provisions or limitations, nor shall the Town be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Town 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 to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Town has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of The Matewan National Bank, Williamson, West Virginia (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

[Remainder of this page intentionally left blank]

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 or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the 29th day of September, 1998.

[SEAL]

Richard N. Ellis
Mayor

ATTEST:

Eddie Perry
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

THE MATEWAN NATIONAL BANK,
as Registrar

By _____
Its Authorized Officer

Dated: September 29, 1998

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $262,099	9/29/98	(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

	Principal	Interest	Total
06/1/20	15,398.59	3,125.00	18,523.59
09/1/20	15,437.08	3,086.51	18,523.59
12/1/20	15,475.68	3,047.91	18,523.59
03/1/21	15,514.37	3,009.22	18,523.59
06/1/23	15,553.15	2,970.44	18,523.59
09/1/21	15,592.03	2,931.56	18,523.59
12/1/21	15,631.01	2,892.58	18,523.59
03/1/22	15,670.09	2,853.50	18,523.59
06/1/22	15,709.27	2,814.32	18,523.59
09/1/22	15,748.54	2,775.05	18,523.59
12/1/22	15,787.91	2,735.68	18,523.59
03/1/23	15,827.38	2,696.21	18,523.59
06/1/23	15,866.95	2,656.64	18,523.59
09/1/23	15,906.62	2,616.97	18,523.59
12/1/23	15,946.38	2,577.21	18,523.59
03/1/24	15,986.25	2,537.34	18,523.59
06/1/24	16,026.22	2,497.37	18,523.59
09/1/24	16,066.28	2,457.31	18,523.59
12/1/24	16,106.45	2,417.14	18,523.59
03/1/25	16,146.71	2,376.88	18,523.59
06/1/25	16,187.08	2,336.51	18,523.59
09/1/25	16,227.55	2,296.04	18,523.59
12/1/25	16,268.12	2,255.47	18,523.59
03/1/26	16,308.79	2,214.80	18,523.59
06/1/26	16,349.56	2,174.03	18,523.59
09/1/26	16,390.43	2,133.16	18,523.59
12/1/26	16,431.41	2,092.18	18,523.59
03/1/27	16,472.49	2,051.10	18,523.59
06/1/27	16,513.67	2,009.92	18,523.59
09/1/27	16,554.95	1,968.64	18,523.59
12/1/27	16,596.34	1,927.25	18,523.59
03/1/28	16,637.83	1,885.76	18,523.59
06/1/28	16,679.43	1,844.16	18,523.59
09/1/28	16,721.12	1,802.47	18,523.59
12/1/28	16,762.93	1,760.66	18,523.59
03/1/29	16,804.83	1,718.76	18,523.59
06/1/29	16,846.85	1,676.74	18,523.59
09/1/29	16,888.96	1,634.63	18,523.59
12/1/29	16,931.19	1,592.40	18,523.59
03/1/30	16,973.51	1,550.08	18,523.59
06/1/30	17,015.95	1,507.64	18,523.59

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

	Principal	Interest	Total
09/1/30	17,058.49	1,465.10	18,523.59
12/1/30	17,101.13	1,422.46	18,523.59
03/1/31	17,143.89	1,379.70	18,523.59
06/1/31	17,186.75	1,336.84	18,523.59
09/1/31	17,229.71	1,293.88	18,523.59
12/1/31	17,272.79	1,250.80	18,523.59
03/1/32	17,315.97	1,207.62	18,523.59
06/1/32	17,359.26	1,164.33	18,523.59
09/1/32	17,402.66	1,120.93	18,523.59
12/1/32	17,446.16	1,077.43	18,523.59
03/1/33	17,489.78	1,033.81	18,523.59
06/1/33	17,533.50	990.09	18,523.59
09/1/33	17,577.34	946.25	18,523.59
12/1/33	17,621.28	902.31	18,523.59
03/1/34	17,665.33	858.26	18,523.59
06/1/34	17,709.50	814.09	18,523.59
09/1/34	17,753.77	769.82	18,523.59
12/1/34	17,798.16	725.43	18,523.59
03/1/35	17,842.65	680.94	18,523.59
06/1/35	17,887.26	636.33	18,523.59
09/1/35	17,931.98	591.61	18,523.59
12/1/35	17,976.81	546.78	18,523.59
03/1/36	18,021.75	501.84	18,523.59
06/1/36	18,066.80	456.79	18,523.59
09/1/36	18,111.97	411.62	18,523.59
12/1/36	18,157.25	366.34	18,523.59
03/1/37	18,202.64	320.95	18,523.59
06/1/37	18,248.15	275.44	18,523.59
09/1/37	18,293.77	229.82	18,523.59
12/1/37	18,339.50	184.09	18,523.59
03/1/38	18,385.35	138.24	18,523.59
06/1/38	18,431.32	92.27	18,523.59
09/1/38	18,477.38	46.21	18,523.59
	$1,250,000.00	$120,745.66	$1,370,745.66

NUMBER

BR-1

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Town, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

Town of Gilbert
Infrastructure Fund (1996D) Loan
Original Loan Amount: $1,250,000
Period: 40 years
Interest: 1%
Series 1998 B
Closed: 9/29/98

	Principal	Interest	Total
06/1/20	15,398.59	3,125.00	18,523.59
09/1/20	15,437.08	3,086.51	18,523.59
12/1/20	15,475.68	3,047.91	18,523.59
03/1/21	15,514.37	3,009.22	18,523.59
06/1/23	15,553.15	2,970.44	18,523.59
09/1/21	15,592.03	2,931.56	18,523.59
12/1/21	15,631.01	2,892.58	18,523.59
03/1/22	15,670.09	2,853.50	18,523.59
06/1/22	15,709.27	2,814.32	18,523.59
09/1/22	15,748.54	2,775.05	18,523.59
12/1/22	15,787.91	2,735.68	18,523.59
03/1/23	15,827.38	2,696.21	18,523.59
06/1/23	15,866.95	2,656.64	18,523.59
09/1/23	15,906.62	2,616.97	18,523.59
12/1/23	15,946.38	2,577.21	18,523.59
03/1/24	15,986.25	2,537.34	18,523.59
06/1/24	16,026.22	2,497.37	18,523.59
09/1/24	16,066.28	2,457.31	18,523.59
12/1/24	16,106.45	2,417.14	18,523.59
03/1/25	16,146.71	2,376.88	18,523.59
06/1/25	16,187.08	2,336.51	18,523.59
09/1/25	16,227.55	2,296.04	18,523.59
12/1/25	16,268.12	2,255.47	18,523.59
03/1/26	16,308.79	2,214.80	18,523.59
06/1/26	16,349.56	2,174.03	18,523.59
09/1/26	16,390.43	2,133.16	18,523.59
12/1/26	16,431.41	2,092.18	18,523.59
03/1/27	16,472.49	2,051.10	18,523.59
06/1/27	16,513.67	2,009.92	18,523.59
09/1/27	16,554.95	1,968.64	18,523.59
12/1/27	16,596.34	1,927.25	18,523.59
03/1/28	16,637.83	1,885.76	18,523.59
06/1/28	16,679.43	1,844.16	18,523.59
09/1/28	16,721.12	1,802.47	18,523.59
12/1/28	16,762.93	1,760.66	18,523.59
03/1/29	16,804.83	1,718.76	18,523.59
06/1/29	16,846.85	1,676.74	18,523.59
09/1/29	16,888.96	1,634.63	18,523.59
12/1/29	16,931.19	1,592.40	18,523.59
03/1/30	16,973.51	1,550.08	18,523.59
06/1/30	17,015.95	1,507.64	18,523.59

Town of Gilbert
Infrastructure Fund (1996D) Loan
Original Loan Amount: $1,250,000
Period: 40 years
Interest: 1%
Series 1998 B
Closed: 9/29/98

	Principal	Interest	Total
09/1/30	17,058.49	1,465.10	18,523.59
12/1/30	17,101.13	1,422.46	18,523.59
03/1/31	17,143.89	1,379.70	18,523.59
06/1/31	17,186.75	1,336.84	18,523.59
09/1/31	17,229.71	1,293.88	18,523.59
12/1/31	17,272.79	1,250.80	18,523.59
03/1/32	17,315.97	1,207.62	18,523.59
06/1/32	17,359.26	1,164.33	18,523.59
09/1/32	17,402.66	1,120.93	18,523.59
12/1/32	17,446.16	1,077.43	18,523.59
03/1/33	17,489.78	1,033.81	18,523.59
06/1/33	17,533.50	990.09	18,523.59
09/1/33	17,577.34	946.25	18,523.59
12/1/33	17,621.28	902.31	18,523.59
03/1/34	17,665.33	858.26	18,523.59
06/1/34	17,709.50	814.09	18,523.59
09/1/34	17,753.77	769.82	18,523.59
12/1/34	17,798.16	725.43	18,523.59
03/1/35	17,842.65	680.94	18,523.59
06/1/35	17,887.26	636.33	18,523.59
09/1/35	17,931.98	591.61	18,523.59
12/1/35	17,976.81	546.78	18,523.59
03/1/36	18,021.75	501.84	18,523.59
06/1/36	18,066.80	456.79	18,523.59
09/1/36	18,111.97	411.62	18,523.59
12/1/36	18,157.25	366.34	18,523.59
03/1/37	18,202.64	320.95	18,523.59
06/1/37	18,248.15	275.44	18,523.59
09/1/37	18,293.77	229.82	18,523.59
12/1/37	18,339.50	184.09	18,523.59
03/1/38	18,385.35	138.24	18,523.59
06/1/38	18,431.32	92.27	18,523.59
09/1/38	18,477.38	46.21	18,523.59
	$1,250,000.00	$120,745.66	$1,370,745.66

Average weighted maturity	31.10
NIC	0.2999426%
Aritrage Yield	0.2999426%

NUMBER

R-1

EXHIBIT C

"SPECIMEN"

United States of America
State of West Virginia
Town of Gilbert
Sewerage System Revenue Note
Series 1998
Number R-1
$750,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF GILBERT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Town"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to The Matewan National Bank, Williamson, West Virginia (the "Owner"), or registered assigns, the sum of Seven Hundred Fifty Thousand Dollars ($750,000), or such lesser sum as shall be reflected by the Record of Advances and Payments attached hereto, on demand. Notwithstanding any provision of this Note to the contrary, this Note shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto, provided that the Record of Advances and Payments shall reflect the specific Project for which each advance or payment is made. Interest shall accrue only on the amount of the outstanding indebtedness from the actual date of each advance or payment, as the case may be, as listed on said Record of Advances and Payments and shall cease to accrue on the amount hereof outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. Such interest shall be at the rate of two percent per annum above the prime rate as published from time to time in The Wall Street Journal, adjusted daily on the basis of a 365-day year. Such interest is payable on the date on which the entire principal amount of this Note is repaid, or, if a portion of the outstanding principal amount of this Note is repaid in advance of the repayment of the remainder of the outstanding principal amount, all interest accrued on such portion shall be paid at the time of repayment in advance of such portion. The Registrar, as hereinafter defined, shall notify the Town of the amount of interest so accrued. This Note

shall be payable as to principal upon surrender at the principal office of The Matewan National Bank, Williamson, West Virginia, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America; provided, that, except in the case the Note is being prepaid in full and either (i) the Town's notice of prepayment requires surrender or (ii) the Letter of Credit, as hereinafter defined, has expired, any payment of principal prior to the maturity of this Note as provided by the Ordinance, as hereinafter defined, shall be recorded on the Record of Advances and Payments attached hereto, and this Note shall be returned to the Owner. Prepayments of the principal of this Note may be made upon two (2) days' notice to the Owner. Any such prepayment shall also be reflected on the Record of Advances and Payments attached hereto, and interest shall cease to accrue thereon.

This Note is issued pursuant to the Bond and Note Ordinance enacted by the Council of the Town on September 14, 1998 (the "Ordinance"), to evidence the Town's obligation to repay any draw upon a letter of credit (the "Letter of Credit") by the U.S. Army Engineer District, Huntington (the "Beneficiary") from The Matewan National Bank, Williamson, West Virginia (the "Bank"). This Note was issued to provide funds for the acquisition and construction of a sewerage treatment plant for the Town to the extent grant proceeds and other funds are not timely available therefor.

This Note is issued, in addition to the Ordinance, under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and is subject to all the terms and provisions of said Ordinance and said Act. The principal of and interest on this Note are payable from a portion of the proceeds of the Infrastructure Grant. The principal of and interest on this Note are further payable from and secured by a lien on the revenues derived from the operation of the sewerage system of the Town; provided, that such lien on the revenues is junior, subordinate and inferior to the lien on such net revenues created on behalf of the Bonds, as set forth in the Ordinance.

This Note does not constitute a corporate indebtedness of the Town within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Town be obligated to pay the same or the interest hereon except from the special fund provided from the proceeds of the Infrastructure Grant and the net revenues derived from the operation of said sewerage system. Under the Ordinance, the Town has entered into certain covenants with the Owner, for the terms of which reference is made to said Ordinance. Remedies provided the Owner are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable, as provided in the Ordinance, only upon the books of the Town at the office of the Registrar by the Owner in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to said Registrar duly executed by the Owner or his duly authorized attorney. Upon transfer hereof, there shall be issued another fully registered Note or fully registered Notes of the aggregate stated principal amount equal to the stated principal amount thereof but evidencing only the indebtedness reflected on the Record of Advances and Payments attached hereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount hereof as reflected on the Record of Advances and Payments attached hereto.

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

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

[Remainder of Page Intentionally Left Blank]

NUMBER

R-1

IN WITNESS WHEREOF, the Town of Gilbert, West Virginia, has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by the Recorder, all as of the 29th day of September, 1998.

Richard Sellers

Mayor

"SPECIMEN"

[SEAL]

Attest:

Eddie Perry

Recorder

"SPECIMEN"

NUMBER

R-1

CERTIFICATE OF AUTHENTICATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name set forth above on the date set forth below.

Date: September 29, 1998

THE MATEWAN NATIONAL BANK,
as Registrar

By _____
Its Authorized Officer

NUMBER

R-1

RECORD OF ADVANCES AND PAYMENTS*

Date	Amount Advanced	Principal Payment	Project	Outstanding** Balance	Authorized Officer

* To be completed upon each draw upon or repayment on the Letter of Credit, with the specific project for which the advance or payment is being made being noted.

** Not to exceed $750,000 at any one time.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____ the Sewerage System Revenue Note, Series 1998, dated _____, 1998, of the Town of Gilbert, West Virginia, and does hereby irrevocably constitute and appoint _____, attorney to transfer said Note on the books of said Town with full power of substitution in the premises.

_____

DATED: _____

IN THE PRESENCE OF: _____

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, the undersigned Eddie Perry, the permanent, duly elected or appointed Recorder of the Town of Gilbert, West Virginia (the "Town"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"), and the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B (the "Series 1998 B Bonds,"and collectively with the Series 1998 A Bonds, the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Town and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Incorporation of the Town.

2. Rules of Procedure.

3. Oaths of Office of the Mayor, Recorder, and members of Council.

4. Rate Ordinance.

5. Ordinance creating the Sanitary Board.

6. Appointments of Members of the Sanitary Board.

7. Oaths of Office of the Members of the Sanitary Board.

8. Minutes of the regular Council meeting held August 17, 1998, regarding first reading of the Bond Ordinance.

9. Bond Ordinance (the "Ordinance") passed by Council on August 24, 1998.

10. Minutes of special meeting held by Council on August 24, 1998, regarding second reading and passage of the Ordinance.

11. Supplemental Resolution adopted by Council on September 14, 1998, authorizing the sale of the above-referenced Bonds.

12. Excerpt of Minutes of the September 14, 1998, public hearing and regular Council meeting regarding the adoption of the Supplemental Resolution.

13. Loan Agreement, dated August 2, 1998, between the Town, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection ("DEP") for the Series 1998 A Bonds.

14. Loan Agreement, dated August 14, 1998, between the Town and the Authority for the Series 1998 B Bonds.

15. West Virginia Infrastructure and Jobs Development Council approval letter dated November 10, 1997.

16. Copies of the Final Order of the West Virginia Public Service Commission (the Commission") dated November 1, 1994, granting the Town a Certificate of Convenience and Necessity and approving the financing, the Commission Order Conditionally Approving Additional Funding, dated January 23, 1998, and the Commission Order, dated September 23, 1998 approving Increase in Project Costs and Revised Financing.

17. Evidence of the West Virginia Infrastructure and Jobs Development Council Grant.

18. Evidence of the Small Cities Block Grant.

19. Project Cooperation Agreement between the Town and the United States Army Corps of Engineers dated March 20, 1998.

WITNESS my signature and the official seal of the Town of Gilbert, West Virginia as of the 29th day of September, 1998.

Eddie Perry

Recorder
Town of Gilbert

(SEAL)

CHASFS3:129488

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 B

CERTIFICATE AS TO NON-ARBITRAGE

I, Richard Ellis, Mayor of the Town of Gilbert, West Virginia (the "Town"), being one of the officials of the Town duly charged with the responsibility for the issuance of the $1,250,000 aggregate principal amount of the Town's Sewerage System Revenue Bonds, Series 1998 B (the "Series 1998 B Bonds"), dated September 29, 1998, hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations (the "Code"). I am one of the officers of the Town charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Town.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Town in existence on September 29, 1998, the date on which the Series 1998 B Bonds are to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Town set forth herein are reasonable.

5. In the Bond Ordinance (the "Ordinance") pursuant to which the Series 1998 B Bonds are issued, the Town has covenanted to make no use of the proceeds of the Series 1998 B Bonds which would cause the Series 1998 B Bonds to be "arbitrage bonds" within the meaning of the Code.

6. The Series 1998 B Bonds were sold on September 29, 1998, to the West Virginia Water Development Authority (the "Authority") pursuant to a loan agreement dated September 29, 1998, by and between the Town and the Authority. The Series 1998 B Bonds were issued simultaneously with the Town's Sewerage System Revenue Bonds, Series 1998 A, issued in the aggregate principal amount of $1,250,000 (the "Series 1998 A Bonds," and collectively with the Series 1998 B Bonds, sometimes referred to herein as the "Original

Bonds" or the "Bonds"). The Series 1998 A Bonds bear no interest and the Series 1998 B Bonds bear interest at the rate of one percent (1.00%) per annum.

7. The Series 1998 B Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs, not otherwise provided, of the acquisition and construction of a new sewerage collection and treatment system of the Town (the "Project"); and (ii) paying costs of issuance and other costs in connection therewith.

8. The Town shall, within 30 days following delivery of the Series 1998 B Bonds, enter into agreements which require the Town to expend in excess of $62,500 on the Project constituting a substantial binding commitment, or has already done so. Acquisition, construction and equipping of the Project will proceed with due diligence to completion, and all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, with the exception of the reserve account deposits, if any, will be expended for payment of Costs of the Project on or before December 31, 1999. The proceeds of the Series 1998 B Bonds will be advanced to the Town, from time to time, as costs are incurred and payments are due. The Town, upon receipt of the advanced proceeds of the Series 1998 B Bonds will immediately pay the approved costs. The Town does not reasonably anticipate receipt of any substantial earnings on the proceeds of the Series 1998 B Bonds.

9. The total cost of the Project is estimated at $6,843,252. Sources and uses of funds for the Project are as follows:

SOURCES

Series 1998 A Bonds	$ 1,250,000
Series 1998 B Bonds	1,250,000
Infrastructure Council Grant	1,250,000
Small Cities Block Grant	750,000
U.S. Army Corps of Engineers Grant	2,343,252
Total Sources	$ 6,843,252

[Remainder of this page intentionally left blank]

USES

Construction - Plant (Contract 1)	$2,825,660
Construction - Lines (Contract 2)	2,553,833
Technical Services	770,842
Legal and Fiscal	20,000
Administrative	68,000
Site and Other Lands	125,000
Loan Repayment	57,740
Capitalized Interest	61,000
Project Contingency	81,294
Construction Contingency	255,383
Costs of Issuance	25,000
Total Uses	$ 6,843,252

The amount of Project costs is estimated to be at least equal to the gross proceeds of the Original Bonds and the above-noted grants (the "Grant Receipts"). Except for the proceeds of the Original Bonds and Grant Receipts and as otherwise provided in the Ordinance, no other funds of the Town will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

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

The following special funds or accounts are created with and shall be held by the Depository Bank:

(1) Revenue Fund;

(2) Renewal and Replacement Fund; and

(3) Bond Construction Trust Fund (separate subaccounts to be established for each series of Original Bonds).

The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

(1) Sinking Fund; and

(a) Within the Sinking Fund, the Reserve Account.

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

(1) From the proceeds of the Original Bonds, there shall be deposited with the Commission in the respective reserve account the sum, if any, set forth in the Supplemental Resolution for funding of said Reserve Account.

(2) The remaining moneys derived from the sale of the Original Bonds shall be deposited by the Town, as received from time to time, in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project including but not limited to payment of cost of issuance.

Except for "preliminary expenditures" as defined in Treas. Reg. 1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Town for costs of the Project previously incurred and paid by the Town with its own or other funds.

12. Moneys held in the Sinking Fund will be used solely to pay principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of and interest on the Bonds, as the same shall become due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Sinking Fund and Reserve Account shall be transferred, not less than once each year to the Bond Construction Trust Fund prior to completion of the Project, and thereafter into the Revenue Fund to be applied to the next ensuing interest and principal payment.

13. Except for the respective Sinking Fund and the respective Reserve Account, there are no other funds or accounts established or held by the Town which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for Bonds, and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Town encounters financial difficulties. The Town does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts or other investment-type property producing a yield in excess of the yield on the Series 1998 B Bonds, have been or will be pledged to payment of the Series 1998 B Bonds. Less than 10% of the proceeds of the Series 1998 B Bonds will be deposited in the Series 1998 B Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1998 B Reserve Account from time to time by the Town will not exceed the maximum

annual principal and interest on the Series 1998 B Bonds and will not exceed 125% of average annual principal and interest on the Series 1998 B Bonds. Amounts in the Series 1998 B Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 1998 B Reserve Account is required by the Authority, is vital to its purchase of the Series 1998 B Bonds and is reasonably required to assure payments of debt service on the Series 1998 B Bonds.

14. The Town (or the Army Corps of Engineers on the Town's behalf) will enter into contracts for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Series 1998 B Bonds or $100,000.

15. Work with respect to the construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within 12 months.

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

17. All of the proceeds of the Series 1998 B Bonds will be expended on the Project within two years from the date of issuance thereof.

18. Any money deposited in the Sinking Fund for payment of the principal and interest on the Series 1998 B Bonds (other than the Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and any moneys received from the investment of amounts held in the Sinking Fund (other than in the Reserve Account therein) will be spent within a 1-year period beginning the date of receipt.

19. The amount designated as cost of issuance of the Series 1998 B Bonds consists only of costs which are directly related to and necessary for the issuance of the Series 1998 B Bonds.

20. All property financed with the proceeds of the Series 1998 B Bonds will be held for Federal income tax purposes by (or on behalf of) a qualified governmental unit.

21. The Town shall file Form 8038-G for the Series 1998 B Bonds in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

22. No more than 10% of the proceeds of the Series 1998 B Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Series 1998 B Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

23. The original proceeds of the Series 1998 B Bonds will not exceed the amount necessary for the purposes of the issue.

24. The Town has general taxing powers to finance operations of or facilities of the nature of the System, and the Town and all subordinate entities reasonably expect to issue less than $5,000,000 of tax-exempt obligations during calendar year 1998 and has issued no other tax-exempt obligations during the current calendar year and the Town believes that it may avail itself of the "small governmental issuer" exception to rebate. The Series 1998 A bonds are non-interest bearing and the Series 1998 B Bonds bear interest at the rate of one percent (1.00%) per annum.

25. The Town shall use the proceeds of the Series 1998 B Bonds solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Town.

26. The Town shall not permit at any time or times any of the proceeds of the Series 1998 B Bonds, or any other funds of the Town, to be used directly or indirectly in a manner which would result in the exclusion of Series 1998 B Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Series 1998 B Bonds as "private activity bonds" within the meaning of the Code. The Town will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Series 1998 B Bonds is excludable from gross income for federal income tax purposes.

27. The Series 1998 B Bonds, in whole or in part, are not and will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

28. The Town will rebate to the United States the amount, if any, required by the Code and to take all steps necessary to make such rebates. In the event the Town fails to make such rebates as required, the Town shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 1998 B Bonds.

29. The Town has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion of the interest on the Series 1998 B Bonds from gross income for federal income tax purposes.

30. The Town shall comply with the yield restriction on the proceeds of the Series 1998 B Bonds as set forth in the Code.

31. The Town has either (a) funded the Reserve Account at the maximum amount of principal and interest which will mature and become due on the Series 1998 B Bonds in the then current or any succeeding year with the proceeds of the Series 1998 B Bonds, or (b) created the Reserve Account which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 1998 B Bonds in the then current or any succeeding year. Moneys in the Reserve Account and the Sinking Fund (established for the annual payment of principal and interest)

will be used solely to pay principal of and interest on the Series 1998 B Bonds and will not be available to pay costs of the Project.

32. The Town shall submit to the Authority within thirty (30) days following the end of the Town's bond year a certified copy of its rebate calculation or if the Town qualifies for the small governmental issuer exception to rebate, then the Town shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Series 1998 B Bonds subject to rebate. The Town covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Series 1998 B Bonds.

33. The Town expects that no part of the Project financed by the Series 1998 B Bonds will be sold or otherwise disposed of prior to the last maturity date of the Series 1998 B Bonds.

34. Jackson & Kelly is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Series 1998 B Bonds.

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

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, I have set my hand this 29th day of September, 1998.

TOWN OF GILBERT

By Richard N. Ellis
Mayor

CHASFS3:129496

Form **8038-G** (Rev. May 1995) Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate instructions.

(Note: *Use Form 8038-GC if the issue price is under $100,000.*)

OMB No. 1545-0720

Part I Reporting Authority — If Amended Return, check here ▶ ☐

1 Issuer's name: Town of Gilbert

2 Issuer's employer identification number: 55 : 0519751

3 Number and street (or P.O. box if mail is not delivered to street address): P.O. Box 188 — Room/suite:

4 Report number: G19 98 - 1

5 City, town, or post office, state, and ZIP code: Gilbert, West Virginia 25621

6 Date of issue: September 29, 1998

7 Name of issue: $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998B

8 CUSIP number: N/A

Part II Type of Issue (check applicable box(es) and enter the issue price)

9	☐ Education (attach schedule–see instructions)	9	$
10	☐ Health and hospital (attach schedule–see instructions)	10	
11	☐ Transportation	11	
12	☐ Public safety	12	
13	☒ Environment (including sewage bonds)	13	$1,250,000
14	☐ Housing	14	
15	☐ Utilities	15	
16	☐ Other. Describe (see instructions) ▶	16	
17	If obligations are tax or other revenue anticipation bonds, check box ▶ ☐		
18	If obligations are in the form of a lease or installment sale, check box ▶ ☐		

Part III Description of Obligations

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity	9/1/2038	1.00%	$18,477.39	$18,477.39			
20 Entire issue			$1,250,000	$1,250,000	31.10 years	✓ %	✓ %
						.2999426	.2999426

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

21	Proceeds used for accrued interest		21	–0–
22	Issue price of entire issue (enter amount from line 20, column (c))		22	$1,250,000
23	Proceeds used for bond issuance costs (including underwriters' discount)	23 $ 25,000.00		
24	Proceeds used for credit enhancement	24 –0–		
25	Proceeds allocated to reasonably required reserve or replacement fund	25 –0–		
26	Proceeds used to currently refund prior issues	26 –0–		
27	Proceeds used to advance refund prior issues	27 –0–		
28	Total (add lines 23 through 27)		28	$ 25,000
29	Nonrefunding proceeds of the issue (subtract line 28 from line 22 and enter amount here)		29	$1,225,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

30 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ N/A years

31 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ N/A years

32 Enter the last date on which the refunded bonds will be called ▶ N/A

33 Enter the date(s) the refunded bonds were issued ▶

Part VI Miscellaneous

34	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	34	–0–
35	Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception)	35	–0–
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	–0–
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	–0–

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

39 If the issuer has identified a hedge, check box ▶ ☐

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Richard M. Ellis — Signature of issuer's authorized representative

9/29/98 — Date

Richard M. Ellis, Mayor — Type or print name and title

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Cat. No. 63773S Form **8038-G** (Rev. 5-95)

Printed on recycled paper

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

CERTIFICATE OF CONSULTING ENGINEER

I, Steven D. Cole, Registered Professional Engineer, West Virginia License No. 10436, of Woolpert LLP, Charleston, West Virginia, hereby certify that my firm is engineer for the acquisition and construction of a sewerage collection and treatment system (herein called the "Project") of the system (the "System") of the Town of Gilbert (the "Issuer") to be constructed primarily in Mingo County, West Virginia, which acquisition and construction is being permanently financed, in part, by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the Bond Ordinance enacted by the Council of the Issuer on September 14, 1998, effective September 14, 1998; the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated as of September 2, 1998, for the Series 1998 A Bonds, and the Loan Agreement by and between the Issuer and the Authority, dated September 29, 1998, for the Series 1998 B Bonds.

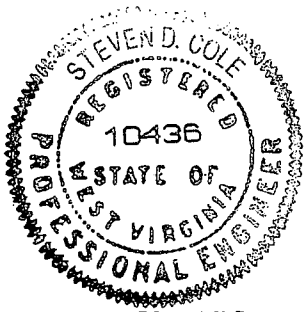
1. The Bonds are being issued for the purpose of (i) paying costs of acquisition and construction of a sewerage collection and treatment system of the Town (the "Project"); and (ii) paying certain costs of issuance thereof and related costs.

2. The undersigned hereby certifies that to the best of my knowledge and belief (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the applications submitted to the Authority, DEP and the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") requesting the Authority to purchase the Bonds (the "Applications") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least forty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Applications and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the chosen bidders received any and all addenda to the original bid documents, (v) the bid documents reflect the Project as approved by the West Virginia Division of Environmental Protection, (vi) the chosen bids include every construction item necessary to complete the Project, or explain any deviation thereof, (vii) the uniform bid procedures were followed, (viii) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (ix) the rates and charges for the System as adopted by the

Council of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreements, (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 29th day of September, 1998.

WOOLPERT LLP



[SEAL]

By _____
Steven D. Cole, P.E.
West Virginia License No. 10436

CHASFS3:129529

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Town of Gilbert

SCHEDULE B

	TOTAL	CORPS	IJDC	SRF	SCBG
A) Construction Costs					
1. Contract 1: Plant	2,825,660.00	$2,162,410.00	$663,250.00		
2. Contract 2: Lines	2,553,833.00		$856,583.00	$1,225,000.00	$472,250.00
B) Technical Services					
1. Design	459,342.00	$180,842.00	$145,750.00		$132,750.00
2. Bidding/Construction Services	62,500.00		$62,500.00		
3. Resident Project Representative	150,500.00		$150,000.00		
4. Special Services	98,500.00		$98,500.00		
C) Legal and Fiscal					
1. Attorneys Fees (Easements, PSC, etc.)	15,000.00				$15,000.00
2. Accountant	5,000.00				$5,000.00
D) Administration	68,000.00		$28,000.00		$40,000.00
E) Sites and Other Lands					
1. Land Acquisition Costs	50,000.00				$50,000.00
2. Easement Costs					
3. Appraisals or Other Related Costs	25,000.00				$25,000.00
4. Permits	50,000.00		$40,000.00		$10,000.00
F) Other Costs					
1. Loan Repayment	57,240.00		$57,240.00		
2. Capitalized Interest	61,000.00		$61,000.00		
3					
G) Bond Counsel	25,000.00			$25,000.00	
H) Construction Contingency	255,383.00		$255,383.00		
I) Project Contingency	81,294.00		$81,294.00		
J) Totals	$6,843,252.0	2,343,252.00	2,500,000.00	1,250,000.00	750,000.00

Richard N. Ellis
Governmental Agency

Date: 9/14/98

Steven D. Cook
Consulting Engineer

Date: 9/14/98

C. JEFFREY VALLET, CPA
OWNER

AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
WV ASSOCIATION OF
CERTIFIED PUBLIC ACCOUNTANTS

Vallet & Associates, AC
210 DINGESS STREET
LOGAN, WEST VIRGINIA 25601
(304) 752-1272

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

CERTIFICATE OF ACCOUNTANT AS TO COVERAGE

I, C. Jeffrey Vallet, Certified Public Accountant, have reviewed the sewer service rates of the Town of Gilbert, West Virginia (the "Town") and the estimated customer usage. It is my opinion that those rates are adequate to pay operation and maintenance expenses, and to meet the debt service coverage requirements of the Sewerage System Revenue Bonds, Series 1998 A, and the Sewerage System Revenue Bonds, Series 1998 B, pursuant to the Bond Ordinance adopted by the Council on July 24, 1997, effective September 14, 1998, and a Supplemental Resolution adopted by the Council on September 14, 1998, and are sufficient to comply with the provisions of the Loan Agreement entered into by and among the Town, the West Virginia Division of Environmental Protection, and the West Virginia Water Development Authority (the "Authority") on July 29, 1997, for the Series 1998 A Bonds and the Loan Agreements entered into by and among the Town and the Authority on September 14, 1998, for the Series 1998 B Bonds. The rates and charges provide debt service coverage in excess of 115%.

WITNESS my signature as of this 14th day of September, 1998.

C. Jeffrey Vallet
Certified Public Accountant

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 29th day of September, 1998, by and between the TOWN OF GILBERT, WEST VIRGINIA, a municipal corporation (the "Governmental Agency"), and THE MATEWAN NATIONAL BANK, Williamson, West Virginia (the "Registrar").

WHEREAS, the Governmental Agency has, contemporaneously with the execution hereof, issued and sold its $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"), in the form of one bond, numbered AR-1, and its $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B (the "Series 1998 B Bonds"), in the form of one bond, numbered BR-1 (collectively, the "Bonds"), in fully registered form pursuant to a Bond Ordinance duly enacted September 14, 1998, effective September 14, 1998, and a Supplemental Resolution adopted September 14, 1998 (collectively, the "Ordinance");

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

WHEREAS, the Ordinance provides for an appointment by the Governmental Agency of a Registrar for the Bonds; and

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

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

1. Upon the execution of this Registrar's Agreement by the Governmental Agency and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar, for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal

Securities Rulemaking Board or similar regulatory bodies as the Governmental Agency advises it of and with generally accepted industry standards.

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

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

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Governmental Agency hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection with this Registrar's Agreement.

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

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

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

GOVERNMENTAL AGENCY:

Town of Gilbert
P.O. Box Box 188
Gilbert, WV 25621-0188
Attention: Richard Ellis, Mayor

REGISTRAR:

Matewan National Bank
P.O. Box 100
Williamson, WV 25661
Attention: Corporate Trust

The Governmental Agency and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the TOWN OF GILBERT and THE MATEWAN NATIONAL BANK, have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

TOWN OF GILBERT

By Richard N. Ellis
Mayor

THE MATEWAN NATIONAL BANK

By: Tranquilla White
Its Authorized Officer

CHASFS3:129539

EXHIBIT A

See Bond Ordinance (Tab No. 8)
See Supplemental Resolution (Tab No. 10)

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

The Matewan National Bank, with its office in Williamson, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the Town of Gilbert, West Virginia duly enacted on September 14, 1998, effective September 14, 1998, and the Supplemental Resolution adopted September 14, 1998 (collectively, the "Ordinance"), authorizing issuance of the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A, in the aggregate principal amount of $1,250,000, and the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B, in the aggregate principal amount of $1,250,000, each dated September 29, 1998 (collectively, the "Bonds") and agrees to perform all duties of Depository Bank, all as set forth in said Ordinance.

Witness my signature as of the 29th day of September, 1998.

THE MATEWAN NATIONAL BANK

By _____
Its Authorized Officer

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

REQUEST AND AUTHORIZATION AS TO AUTHENTICATION
AND DELIVERY OF THE BONDS

September 29, 1998

The Matewan National Bank
P.O. Box 100
Williamson, WV 25661
Attention: Corporate Trust

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A, in the form of one bond numbered AR-1, and the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B, in the form of one bond numbered BR-1 (collectively, the "Bonds") of the Town of Gilbert, West Virginia (the "Town"), authorized to be issued under and pursuant to the Bond Ordinance, duly enacted by the Council of the Town on September 14, 1998, effective September 14, 1998, and a Supplemental Resolution adopted by the Council on September 14, 1998 (collectively, the "Ordinance").

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Town to the West Virginia Water Development Authority.

TOWN OF GILBERT

By Richard N. Ellis
Mayor

(SEAL)

Attest:

Eddie Perry
Recorder, Town of Gilbert

CHASFS3:129547

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

CERTIFICATE OF REGISTRATION OF BONDS

I, Tranquilla Whitt, Vice President of The Matewan National Bank, Williamson, West Virginia, as Registrar (the "Registrar"), hereby certify that on the 29th day of September, 1998, the bonds of the Town of Gilbert, West Virginia in the principal amount of: $1,250,000, designated the "Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A" (the "Series 1998 A Bonds"), and numbered AR-1, dated as of the date hereof; and $1,250,000, designated the "Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B" (the "Series 1998 B Bonds"), and numbered BR-1, dated as of the date hereof; were registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Town kept for that purpose at our office, by a duly authorized officer on behalf of The Matewan National Bank, as Registrar.

WITNESS my signature as of the 29th day of September, 1998.

THE MATEWAN NATIONAL BANK
as Registrar

By: Tranquilla Whitt
Its Vice President

CHASFS3:129553

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

RECEIPT FOR BONDS

The undersigned, Daniel B. Yonkosky, Director of the West Virginia Water Development Authority, for and on behalf of the West Virginia Water Development Authority (the "Authority"), hereby certifies as follows:

1. On the 29th day of September, 1998, in Charleston, West Virginia, the Authority received the entire original issue of $1,250,000 in aggregate principal amount of the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"), said Bond being dated the 29th day of September, 1998; and issued in the form of one bond, fully registered to the Authority, and numbered AR-1.

2. On the 29th day of September, 1998, in Charleston, West Virginia, the Authority received the entire original issue of $1,250,000 in aggregate principal amount of the Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B (the "Series 1998 B Bonds"), said Bond being dated the 29th day of September, 1998; and issued in the form of one bond, fully registered to the Authority, and numbered BR-1.

3. At the time of receipt of each series of Bonds, they had been executed by Richard Ellis, as Mayor of the Town of Gilbert, by manual signature, and attested by Eddie Perry, as Recorder of the Town of Gilbert, by manual signature, and the official seal of said Town had been impressed upon each Bond.

IN WITNESS WHEREOF, Daniel B. Yonkosky duly signed and delivered this receipt on behalf of the West Virginia Water Development Authority on the 29th day of September, 1998.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By Daniel B. Yonkosky
Director

CHASFS3:129554

TOWN OF GILBERT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1998 A AND 1998 B

RECEIPT FOR BOND PROCEEDS

The undersigned Richard Ellis, Mayor of the Town of Gilbert (the "Town"), hereby certifies as follows:

1. The Town has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"), of $62,500 being more than a de minimis portion of the purchase price of the Series 1998 A Bonds. The Town understands that the remaining proceeds will be advanced to the Town from time to time as construction proceeds to completion.

2. The Town has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B (the "Series 1998 B Bonds"), of $262,099 being more than a de minimis portion of the purchase price of the Series 1998 B Bonds. The Town understands that the remaining proceeds will be advanced to the Town from time to time as construction proceeds to completion.

IN WITNESS WHEREOF, the Town of Gilbert has caused this receipt to be executed by its Mayor on this 29th day of September, 1998.

TOWN OF GILBERT

By Richard N. Ellis
MAYOR

CHASFS3:129555

AGENCY: ENVIRONMENTAL PROTECTION
TOTAL: $62,500.00

WARRANT #: 4-1359707
DATE: 09/23/98

TRANACTION ID	INVOICE NUMBER	&	PAYEE REFERENCE	INVOICE DATE	PURCHASE ORDER	AMOUNT
I003448120	1, C544-016					$62,500.00

If you have questions concerning the above, please call 304-759-0507.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL# 0316568

THIS CHECK HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia

STATE CAPITOL, CHARLESTON

WARRANT # **4-1359707**

SEPTEMBER 23, 1998

PAY TO THE ORDER OF TOWN OF GILBERT

**********$62,500.00**

4-1359707

WEST VIRGINIA TREASURY

John D. Perdue
STATE TREASURER

Glen B Gainer III
AUDITOR

⑈4359707⑈ ⑆051902322⑆ 999310⑈6⑈

REVISED: 07/07/92

PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR:

NAME: Town of Gilbert

ADDRESS: City Hall ~~P.O. Box 188~~

Gilbert, WV 25621-0188

TELEPHONE: (304) 664-9625

FEIN: 550519751

2. SRF PROJECT NO.: C-544 016

3. INVOICE NUMBER: 1

4. PERIOD COVERED BY THIS REQUEST:

FROM (MO/DAY/YR) TO (MO/DAY/YR)

9-10-98 9-29-98

5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 0%

SEP 1 3 1998

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED TOTALS	C) THIS REQUEST	D) TOTAL (B & C)	E) APPROVED AGENCY USE ONLY
1) CONSTRUCTION	1,225,000 ✓	-0-	37,500	37,500	37,500
a. Equipment					
2) TECHNICAL SERVICES - BASIC					
a. Engineering Other					
a. Inspection					
3) LEGAL/FISCAL					
4) ADMINISTRATIVE					
5) LAND					
6) FEE INTEREST					
7) LOAN REPAYMENT					
8) CONTINGENCY					
9) INTERIM FINANCING COSTS					
10) RESERVE FUND					
11) CLOSING COST	25,000 ✓	-0-	25,000	25,000	25,000
12) SUBTOTAL	1,250,000 ✓	-0-	62,500	62,500	62,500
13) LESS PREVIOUSLY PAID					0
14) INVOICE AMOUNT					62,500

15) RECIPIENT AUTHORIZED SIGNATURE:

Richard N. Ellis 9/14/98
INVOICE DATE

Richard N. Ellis, Mayor
TYPED OR PRINTED NAME AND TITLE

16) SIGNATURE OF PERSON PREPARING THIS REQUEST

David Michael 9/10/98
DATE

David Michael
Senior Project Administrator
TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY

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

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
DIRECTOR

September 3, 1997

Honorable Tim Rutledge
Mayor, Town of Gilbert
P.O. Box 188
Gilbert, WV 25621

CERTIFIED RETURN RECEIPT REQUESTED

Dear Mayor Rutledge:

Enclosed find WV/NPDES Water Pollution Control Permit No. WV0103748, dated the 3rd day of September, 1997, for the Town of Gilbert to serve same in Gilbert, West Virginia, and environs.

All facilities permitted to discharge pollutants to the waters of the State, under Chapter 22, Article 11 of the West Virginia Code, are required to test their effluent in order to verify permit compliance. This testing is the responsibility of the permittee, and these test results are to be submitted to the office on the Discharge Monitoring Report (DMR), which is attached to the back of this Permit. A DMR is to be completed and received by this office, each month, no later than 20 days following the end of the reporting period. The address to which DMRs are to be sent is noted in Section E.2, Attention: Engineering Branch. It is suggested that several copies of the enclosed DMR form be made for your future use, as this office does not supply permittees with DMR forms.

Please note the attachment to this Permit which describes the annual permit fee requirement.

Please, also, note Section G.7, on page 10, prohibiting the acceptance of new nondomestic wastewater discharges without prior Office approval.

Finally note that copies of all future correspondence regarding the permit including copies of DMRs must be forwarded to the Field Inspector and Field Supervisor at the following address:

Division of Environmental Protection
Office of Water Resources
General Delivery
Teays, West Virginia 25569

If you have any questions, please contact John Morgan of this office at 304-558-4086, or by TDD at 304-558-2751.

Very truly yours,

OFFICE OF WATER RESOURCES

PGSangani

Pravin G. Sangani, P. E.
Branch Leader

PGS:md

Enclosure

WV MUNICIPAL BOND COMMISSION
Suite 300 - L & S Building
12 Quarrier Street, Charleston, WV 25301
(304) 348-3971

NEW ISSUE REPORT FORM
Date of Report: September 29, 1998

ISSUE: $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 A
ADDRESS: P.O. Box 188Gilbert, WV 25621 COUNTY: Mingo
PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: September 29, 1998 CLOSING DATE: September 29, 1998
ISSUE AMOUNT: $1,250,000 RATE: 0%
1st DEBT SERVICE DUE: June 1, 2000 1st PRINCIPAL DUE: June 1, 2000
1st DEBT SERVICE AMOUNT: $15,625.00 PAYING AGENT: WV Municipal Bond Commission

ISSUERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Christopher Callas
Phone: (304) 340-1250

UNDERWRITERS
BOND COUNSEL: _____
Contact Person: _____
Phone: _____

(DEPOSITORY)
CLOSING BANK: Matewan National Bank
Contact Person: Tranquilla Witt
Phone: (304) 235-1660

ESCROW TRUSTEE: _____
Contact Person : _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Tim Rutledge
Position: City Manager
Phone: (304) 664-9625

OTHER: _____
Contact Person: _____
Function: _____
Phone: _____

DEPOSITS TO MBC AT CLOSE:
By _____ Wire
_____ Check(s)

_____ Accrued Interest: $_____
_____ Capitalized Interest: $_____
_____ Reserve Account: $_____
_____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire
_____ Check
_____ IGT

_____ To Escrow Trustee: $_____
_____ To Issuer: $_____
_____ To Cons.Invest.Fund $_____
_____ To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

60560

WV MUNICIPAL BOND COMMISSION
Suite 300 - L & S Building
12 Quarrier Street, Charleston, WV 25301
(304) 348-3971

NEW ISSUE REPORT FORM
Date of Report: September 29, 1998

ISSUE: $1,250,000 Town of Gilbert Sewerage System Revenue Bonds, Series 1998 B
ADDRESS: P.O. Box 188Gilbert, WV 25621 COUNTY: Mingo
PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: September 29, 1998 CLOSING DATE: September 29, 1998
ISSUE AMOUNT: $1,250,000 RATE: 1%
1st DEBT SERVICE DUE: June 1, 2020 1st PRINCIPAL DUE: June 1, 2020
1st DEBT SERVICE AMOUNT: $18,523.59 PAYING AGENT: WV Municipal Bond Commission

ISSUERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Christopher Callas
Phone: (304) 340-1250

UNDERWRITERS
BOND COUNSEL: _____
Contact Person: _____
Phone: _____

(DEPOSITORY)
CLOSING BANK: Matewan National Bank
Contact Person: Tranquilla Witt
Phone: (304) 235-1660

ESCROW TRUSTEE: _____
Contact Person : _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Tim Rutledge
Position: City Manager
Phone: (304) 664-9625

OTHER: _____
Contact Person: _____
Function: _____
Phone: _____

DEPOSITS TO MBC AT CLOSE:
By _____ Wire
_____ Check(s)

_____ Accrued Interest: $_____
_____ Capitalized Interest: $_____
_____ Reserve Account: $_____
_____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire
_____ Check
_____ IGT

_____ To Escrow Trustee: $_____
_____ To Issuer: $_____
_____ To Cons.Invest.Fund $_____
_____ To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

60560

West Virginia Infrastructure & Jobs Development Council

Public Members:
James D. Williams, Chairman
St. Albans
James L. Harrison, Sr., Vice Chairman
Princeton
Lloyd P. Adams, P.E.
Wheeling
Sheirl L. Fletcher
Morgantown

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

Susan J. Riggs, Esquire
Executive Secretary

November 10, 1997

The Honorable Tim Rutledge
Mayor, Town of Gilbert
P. O. Box 188
Gilbert, WV 25621

Re: Wastewater Collection and Treatment System Project 96S-138

Dear Mayor Rutledge:

Reference is hereby made to that certain letter dated March 10, 1997 from the West Virginia Infrastructure and Jobs Development Council (Council) wherein the Council notified the Town of Gilbert (Town) that it may be eligible for an Infrastructure Fund loan of approximately $1,250,000 and an Infrastructure Fund grant of approximately $1,250,000 for the Town's proposed project to construct a wastewater collection and treatment system to serve approximately 470 customers.

The Council, at its November 5, 1997 meeting, voted to offer the Town a binding commitment for the above stated loan and grant. The Council also determined that in order to receive the proposed binding commitment, the Town must adhere to a certain project schedule. Any binding commitment that is issued will be contingent upon the availability of funds in the Infrastructure Fund.

Please contact Susan J. Riggs at the above telephone number to establish the necessary project schedule and finalize the proposed binding commitment.

Sincerely,

James D. Williams

JDW/bh
cc: Woolpert Consultants
David Michael
Diane Folk

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
11-21-94

Entered: November 1, 1994

CASE NO. 94-0305-S-CN

TOWN OF GILBERT, a municipal corporation,
Mingo County.
Application for a certificate of convenience and necessity to construct a sewer system for the Town of Gilbert and surrounding areas at Gilbert, Mingo County, and for approval of financing incidental thereto.

RECOMMENDED DECISION

On April 14, 1994, the Town of Gilbert (Town), a municipal corporation, Mingo County, filed an application, duly verified, for a certificate of convenience and necessity to construct a sewer system for the Town of Gilbert and surrounding areas at Gilbert, Mingo County. The Town estimated that construction will cost approximately $4,611,000 and will be financed through a Small Cities Block Grant in the amount of $750,000, an Economic Development Administration Grant in the amount of $1,000,000, a Design Assistance Grant from DEP in the amount of $110,000, and the balance from a West Virginia Revolving Fund Loan. The Town also proposed to increase its rates and charges for the project.

By Order issued April 14, 1994, the Town was directed to give notice of the filing of the application by publishing a copy of the April 14, 1994 Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mingo County, making due return to the Commission of proper certification of publication immediately after publication. The notice directed anyone desiring to make objection to the application to do so, in writing, within thirty (30) days after publication of the notice to P. O. Box 812, Charleston, West Virginia.

On May 13, 1994, the Commission received an affidavit of publication indicating that the Notice of Filing was published in the Williamson Daily News, Inc. on April 21, 1994.

On May 13, 1994, Commission Staff filed its Initial and Final Joint Staff Memorandum indicating that the Town is apparently trying to rectify its health hazard by being in compliance with state and federal water pollution regulations. Staff indicated that the project will cost approximately $4,611,000 and will be financed by a Small Cities Block Grant in the amount of $750,000, an Economic Development Administration Grant in the amount of $1,000,000, a Design Assistance Grant from DEP in the amount of $110,000, and a West Virginia State Revolving Fund Loan at 0% interest in the amount of $2,751,000. Staff advised that the application contained

no plans or specifications and that the Town provided no municipal ordinance evidencing the adoption of rates and charges to support the project once completed. Staff noted that the Commission directed the Town to file the necessary plans and specifications for the project and the appropriate municipal ordinance supporting the rates and charges by its April 14, 1994 Order.

On May 19, 1994, the Town provided the Commission with a copy of the Town's bond ordinance for the sewer project.

By Order entered May 23, 1994, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before November 9, 1994.

By Order issued August 10, 1994, this matter was set for hearing to be held in the Commission's Hearing Room, 201 Brooks Street, Charleston, West Virginia, on August 31, 1994, to commence at 11:00 a.m.

On August 25, 1994, Commission Staff filed a Further Joint Staff Memorandum indicating that Staff was satisfied that the Town's proposed rates and charges are sufficient for the proposed project. Staff reported that it was unable to recommend approval of the application until an appropriate rate ordinance is provided to Staff.

The hearing convened as scheduled. Appearing on behalf of the Town was Pamela A. Lambert, Esquire. Meyishi Blair, Esquire, appeared on behalf of Commission Staff.

On September 21, 1994, the Commission received an affidavit of publication indicating that the notice of the Town's Ordinance was published in The Williamson Daily News on September 19, 1994.

On October 31, 1994, the Commission received a copy of the ordinance passed by the Town. However, the effective date of the rate ordinance was set as September 20, 1994, the date of the passage of the ordinance, instead of at least forty-five days after the ordinance was adopted.

EVIDENCE

At the hearing, counsel for the Town explained that, while the Town had published the filing of the certificate and the requested rates, a rate ordinance had not been passed. She explained that the Town is in the process of passing the ordinance and that the ordinance would be presented to the Town's Council on September 12, 1994, the next regularly scheduled meeting. (Tr., p. 7). Commission Staff noted that it had no objection to the certificate being conditionally granted, subject to the adoption of the ordinance as submitted to the Commission, in order for the Commission to be satisfied that the rates and charges are in place to support the project once completed. Staff noted that, if any protest to the municipal rate ordinance occurred, the certificate should not be granted. Ms. Blair explained that the certificate would have to be withdrawn if the rates and charges are contested because the municipal appeal could not be resolved

prior to the statutory guidelines set out for the certificate in West Virginia Code §24-2-11. (Tr., p. 9).

Staff noted that the Town of Gilbert should be commended for taking action prior to the receipt of a consent decree regarding its sewer system. (Tr., pp. 9-10). Staff advised that it is satisfied that the project is consistent with the Commission's rules and regulations and West Virginia Code §24-2-11. (Tr., p. 10). The Town accepted Staff's recommendation. (Tr., p. 11). The parties were advised that an extension of the decision due date, if obtained, could be no later than December 9, 1994.

Counsel for the Town advised that it would attempt to have its first reading of the ordinance on September 12, 1994; the second reading a week later; and the expiration of the 30-day municipal appeal prior to the November 9, 1994 deadline. The Town acknowledged that, if a municipal appeal was filed, the application would be in jeopardy. (Tr., p. 14). The matter was submitted subject to receipt of the rate ordinance.

DISCUSSION

West Virginia Code §24-2-4b(b) provides in pertinent part, "All rates and charges set by a . . . municipally operated public utility . . . shall be . . . effective not sooner than forty-five days after adoption . . ." Recently in Town of Eleanor, Case No. 94-0435-W-MA, the Commission addressed the issue regarding the legality of a rate ordinance which states its effective date sooner than forty-five days after the adoption of the ordinance. The Recommended Decision in Case No. 94-0435-W-MA was entered on August 25, 1994, and became the final order of the Commission on September 14, 1994. In that order, the Administrative Law Judge found that invalidating the effective date of the rates does not necessarily require invalidating the ordinance as a whole. The Order noted that the Commission has previously suspended effective dates and proceeded to consider the merits of proposed rate increases. The proposed rates were then to become effective upon the recommended decision becoming a final order of the Commission. (See, e.g., Town of Mill Creek, Case No. 93-0977-W-MA (March 22, 1994); City of Beckley, Case No. 93-0813-S-MA (January 20, 1994); Town of New Haven, Case No. 80-288-W-MA (October 5, 1980); and City of Cameron, Case No. 80-206-WS-MA (September 17, 1980)). In some cases the proposed rates were disapproved (See, e.g., Town of Matoaka, Case No. 88-842-S-MA (May 9, 1989); Town of Clay, Case No. 88-134-W-MA (September 9, 1988)). The decision noted that, once the illegal effective date is negated, it appears that the Commission continues with its jurisdiction. Since the Town of Gilbert's sewer system has not been constructed, there is no possibility that any customer has been or will be charged the rate until the certificate is approved. Therefore, the Administrative Law Judge is of the opinion that the effective date can be corrected by the order which certificates the project.

FINDINGS OF FACT

1. On April 14, 1994, the Town of Gilbert, a municipal corporation, Mingo County, filed an application, duly verified, for a certificate of convenience and necessity to construct a sewer system for the Town of

Gilbert and surrounding areas at Gilbert, Mingo County. (See, application).

2. The cost of the project is approximately $4,611,000 and is to be financed through a Small Cities Block Grant in the amount of $750,000, an Economic Development Administration Grant in the amount of $1,000,000, a Design Assistance Grant from the Department of Environmental Protection in the amount of $110,000, and a West Virginia State Revolving Fund Loan in the amount of $2,751,000 at 0% interest. (Initial and Final Joint Staff Memorandum filed May 13, 1994).

3. Publication of the proposed project was made by the Town of Gilbert in accordance with West Virginia Code §24-2-11. (See affidavit of publication received May 13, 1994).

4. By Further Joint Staff Memorandum received August 25, 1994, Commission Staff indicated that it has reviewed the engineering and financial aspects of the application and Staff is satisfied that the rates and charges in the Town's application are sufficient for the proposed project and that the engineering data submitted on behalf of the Town complies with the Commission's rules and regulations. Staff recommended approval of the certificate contingent upon passage of an enacted rate ordinance reflecting the proposed rates and charges. (See Further Joint Staff Memorandum received August 25, 1994).

5. On September 21, 1994, the Commission received an affidavit of publication indicating that a notice of the Town's ordinance was published in The Williamson Daily News on September 19, 1994. Thirty days have passed since the publication and the second reading of the ordinance. The notice indicated that, if the ordinance is accepted on the second reading, the third reading of the ordinance would be waived. The public was invited to attend the meeting for additional information and to express their views regarding the ordinance. (See affidavit of publication received September 21, 1994).

6. On October 31, 1994, the Commission received a copy of the Town's sewer rate ordinance. However, the effective date for the sewer rates and charges was September 20, 1994, instead of at least forty-five days from passage, as required by West Virginia Code §24-2-4b. (See rate ordinance received October 31, 1994).

7. A municipal appeal was not filed regarding the Town's rate ordinance within the 30-day period pursuant to West Virginia Code §24-2-4b. (See case file generally).

CONCLUSIONS OF LAW

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

2. The proposed project will provide adequate service and complies with the Commission's rules and regulations.

3. The Town of Gilbert's project is adequately financed through the proposed sources of funding and the sewer rate ordinance which was recently enacted will provide sufficient operating revenues to support the project after construction.

4. The Town of Gilbert violated West Virginia Code §24-2-4b by attempting to place increased rates into effect immediately upon passage of its municipal rate increase on September 20, 1994, contrary to the requirement that the municipal rate increase cannot become effective sooner than forty-five days after adoption of the ordinance. Said violation of the statute did not make the ordinance as a whole null and void, inasmuch as this filing of the certificate case provided the Commission with jurisdiction to correct the date on which the rates may become effective.

ORDER

IT IS, THEREFORE, ORDERED that the application of the Town of Gilbert, a municipal corporation, Mingo County, filed on April 14, 1994, for a certificate of convenience and necessity to construct a sewer system for the Town of Gilbert and surrounding areas at Gilbert, Mingo County, be, and hereby is, approved.

IT IS FURTHER ORDERED that the financing of the project, consisting of a Small Cities Block Grant in the amount of $750,000, an Economic Development Administration Grant in the amount of $1,000,000, a Design Assistance Grant from the Department of Environmental Protection in the amount of $110,000, and a West Virginia State Revolving Fund Loan in the amount of $2,751,000 at 0% interest be, and hereby is, approved.

IT IS FURTHER ORDERED that the rates adopted by the Town become effective upon completion of the project.

IT IS FURTHER ORDERED that, if there is a change in any of the terms, conditions or scope of the project or financing, the Town of Gilbert shall notify the Commission immediately and it shall request the Commission's approval of the revised project or financing.

IT IS FURTHER ORDERED that the Town of Gilbert notify the Commission within thirty (30) days of the completion of the project.

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

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

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following

the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Susan A. Murensky

Susan A. Murensky
Administrative Law Judge

SAM:mal/dfs

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 23rd day of January, 1998.

CASE NO. 94-0305-S-CN (Reopened)

TOWN OF GILBERT, a municipal corporation,
Mingo County.
Petition to reopen a certificate case for approval of revised and additional funding.

COMMISSION ORDER CONDITIONALLY APPROVING ADDITIONAL FUNDING

PROCEDURE AND DISCUSSION

On August 1, 1997, the Town of Gilbert (Town), a municipal corporation, filed a petition with the Commission seeking to reopen its certificate case in order to obtain regulatory approval for the changes in the Town's funding package for its proposed project. Although on November 21, 1994, a certificate of convenience and necessity for the Town of Gilbert was approved, the funding scenario for the proposed project has changed, and the total project cost has increased substantially, without any increase in project scope.

In response to the Town's petition, Commission Staff filed memoranda with the Commission's Executive Secretary's Office on August 20 and 27, 1997, and January 16, 1998, detailing the following. The cost and financing previously approved was $4,611,000, as follows: a Small Cities Block Grant (SCBG) in the amount of $750,000; an Economic Development Administration Grant in the amount of $1,000,000; a Design Assistance Grant in the amount of $110,000 from the Department of Environmental Protection (DEP) and a loan from the West Virginia State Revolving Fund (SRF) in the amount of $2,751,000 at 0% interest. The new project cost is estimated to be $6,500,000, to be funded as follows: a Small Cities Block Grant in the amount of $750,000; a grant from the U.S. Army Corps of Engineers (USACE) in the amount of $2,000,000; a West Virginia Infrastructure and Job Development Council (IJDC) loan in the amount of $1,250,000; a West Virginia Infrastructure and Job Development Council grant in the amount of $1,250,000; and a WVDEP SRF loan in the amount of $1,250,000. The increased amount of $1.8 million is attributable to the lapse of time since initial approval in 1994.

Public Service Commission of West Virginia

The wastewater treatment plant and some of the pump stations will be constructed by using USACE and SRF funds. The line work and remaining pump stations will be constructed by using SCBG, SRF, and IJDC funds. The plant and some of the lift stations would be of little or no value without all of the lift stations and the necessary lines to tie them together, therefore, the project needs all of the funding in place before any construction begins.

Regarding the project's revised funding, the Corps of Engineers has set aside $2,000,000, however, it is not officially committed/available until a Construction Project Cooperation Agreement has been approved and signed by both the Town and the Corps. The draft agreement has been sent to Washington D.C. but has not been approved.

A binding commitment letter has been received from the Infrastructure Council, dated December 30, 1997 for $1,250,000 for a loan and $1,250,000 for a grant. However, the money will not be available until the new bonds are sold, which is expected in February, 1998.

Although the Town has not submitted a copy of a new rate ordinance or a certificate of publication of that new rate ordinance, in this case, it is the Commission's understanding that the Town's new ordinance necessary to support the project, has been submitted to the Commission's Legal Division for review and that Division is merely awaiting an Affidavit of Publication which substantiates that proper publication of the adopted order has taken place. A new ordinance is necessary because the proposed new rates are 20% higher than those previously advertised and approved by the PSC in 1994. The thirty (30) day protest period has lapsed.

In consideration of all of the above, we shall grant the Town's petition to reopen and condition our approval of the project's revised financing upon the receipt of the following documents within 60 days of the date of this order:

1) The Affidavit of Publication evidencing the Town has provided proper notice of the adopted new ordinance;

2) A copy of the properly executed Construction Project Cooperation Agreement; and

3) Documentation which would confirm that the Infrastructure monies as committed have been received.

FINDINGS OF FACT

1. A Certificate of Convenience and Necessity was approved for The Town of Gilbert on November 1, 1994, to build a sewage treatment plant and system. Financing of the proposed project consisted of: a Small Cities Block Grant in the amount of $750,000; an Economic Development Administration Grant in the amount of $1,000,000, a Design Assistance Grant from the Department of Environmental Protection in the amount of $110,000, and a West Virginia State Revolving Fund Loan in the amount of $2, 751, 000 at 0% interest. See, November 21, 1997 Certificate.

2. Because the costs for the proposed project increased and exceeded the estimated construction costs set forth and approved in the original certificate case, the Town of Gilbert filed additional information with the Commission on August 1, 1997, concerning the revised project costs and additional funding arrangements. See, July 30, 1997 letter from Pamela A. Lambert, Esq.

3. The revised funding for the project is as follows: a Small Cities Block Grant in the amount of $750,000; a grant from the U.S. Army Corps of Engineers in the amount of $2,000,000; a West Virginia Infrastructure and Job Development Corps loan in the amount of $1,250,000; a West Virginia Infrastructure and Job Development Corps grant in the amount of $1,250,000; and a WVDEP SRF in the amount of $1,250,000.

4. The Corps of Engineers has set aside $2,000,000, however, it is not officially committed/available until a Construction Project Cooperation Agreement has been approved and signed by both the Town and the Corps. The draft agreement has not been approved.

5. A binding Commitment letter has been received from the Infrastructure Council, dated December 30, 1997 for $1,250,000 for a loan and $1,250,000 for a grant. However, the money is not yet available.

6. The Town has not submitted a copy of a new rate ordinance or a certificate of publication of that new rate ordinance.

7. The Town has previously demonstrated to the satisfaction of the Commission that the public convenience and necessity require the project and that the project is financially feasible. See, case file generally.

CONCLUSION OF LAW

It is reasonable to grant the Town of Gilbert's request to reopen this certificate proceeding and grant our approval of revised and additional funding pending the receipt of the following documents within sixty (60) days of the date of this order:

1) The Affidavit of Publication evidencing the Town has provided proper notice of the adopted new ordinance;

2) A copy of the properly executed Construction Project Cooperation Agreement; and

3) Documentation which would confirm that the Infrastructure monies as committed have been received.

ORDER

IT IS THEREFORE ORDERED that the petition to reopen the Town of Gilbert's certificate proceeding for approval of revised and additional funding, subject to the filing of the Affidavit of Publication evidencing the Town has provided proper notice of the adopted new ordinance, a copy of the properly executed Construction Project Cooperation Agreement and documentation confirming that the Infrastructure monies as committed have been received.

IT IS FURTHER ORDERED that the financing of the project, consisting of a Small Cities Block Grant in the amount of $750,000; a grant from the U.S. Army Corps of Engineers in the amount of $2,000,000; a West Virginia Infrastructure and Job Development Corps loan in the amount of $1,250,000; a West Virginia Infrastructure and Job Development Corps grant in the amount of $1,250,000; and a WVDEP SRF in the amount of $1,250,000 is approved.

IT IS FURTHER ORDERED if there is any change in the cost of the project that has been approved herein, or in the scope of the project and/or its financing, the Town of Gilbert shall be, and hereby is, directed to advise the Commission of the same and seek additional regulatory approval from the Commission.

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

A True Copy, Teste:

Sandra Neal

Sandra Neal
Executive Secretary

ARC
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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 23rd day of September, 1998.

CASE NO. 94-0305-S-CN (Reopened)

TOWN OF GILBERT, a municipal corporation,
Mingo County.
Application for a certificate of convenience and necessity to construct sewer system for the Town of Gilbert, Mingo County, and for approval of financing incidental thereto.

COMMISSION ORDER APPROVING INCREASE
IN PROJECT COSTS AND REVISED FINANCING

PROCEDURE

On August 27, 1998, the Town of Gilbert (Gilbert) filed a letter by facsimile transmission with the Commission seeking to reopen its certificate case in order to obtain Commission approval of the increase in project costs and to the receipt of a revised grant in the amount of $2,343,252 from the Army Corps of Engineers (ACOE) to cover the increased project costs. According to the letter, which the Commission is treating for processing purposes as a petition, bids for the project were opened on August 4, 1998, and the bids came in over the estimate that had been previously approved by Commission Order dated January 23, 1998. The current petition notes that the project costs have increased by $343,252 as the lowest bid for the project was $6,843,252.

Under the new funding scenario for the project, the Town seeks approval of the following financial package:

Small Cities Block Grant	$ 750,000
Army Corps of Engineers Grant	2,343,252
West Virginia Infrastructure Jobs & Development Grant	1,250,000
West Virginia Infrastructure Jobs & Development Loan	1,250,000
West Virginia DEP SRF Loan	1,250,000
Total	$6,843,252

The Town has asked for expedited treatment concerning its petition as under the ACOE program, contracts must be awarded within sixty (60) days of the bid opening. Furthermore, the

closing on the project has been scheduled for September 30, 1998.

Previously, on August 1, 1997, the Town filed a petition to reopen this case in order to obtain regulatory approval for changes in the Town's funding package for its proposed project. Pursuant to the Town's August 1, 1997 petition, the Commission's January 23, 1998 order approved revised financing, subject to certain conditions, for the proposed project as follows:

Small Cities Block Grant	$ 750,000
Army Corps of Engineers Grant	2,000,000
West Virginia Infrastructure Jobs & Development Grant	1,250,000
West Virginia Infrastructure Jobs & Development Loan	1,250,000
West Virginia DEP SRF Loan	1,250,000
Total	$6,500,000

The increased project costs at that time were approximately $1.8 million more than what was approved in the Commission's November 21, 1994 order and was attributed to the increase in costs due to the lapse of time from when the project was originally certificated by the Commission.

Additional documentation in support of the Town's August 27, 1998 petition was received at the Commission on September 2, 1998.

On September 16, 1998, the Staff filed its "Further Final Joint Staff Memorandum" in this case in response to the Town's August 27, 1998 petition. According to the Staff, the Commission should grant its approval to the increased project costs as well as the revised financing.

DISCUSSION

As with any order wherein a project is certificated, the Commission directs the regulated entity to seek additional regulatory approvals if, inter alia, the scope of and/or financing for the project changes. In this instance, the project bids came in over the amount that was approved by the Commission's January 23, 1998 order. Although the Town selected the lowest bid in question, a shortfall in the funding package existed, even with the acceptance of the lowest bid, in the amount of approximately $343,252. To make up the shortfall, the ACOE has committed an additional $343,252 in grant dollars above what was previously committed and approved in January by the Commission. See, Further Final Joint Staff Memorandum filed September 16, 1998, and August 25, 1998 letter from the Department of the Army, Huntington District, Corps of Engineers received on September 2, 1998, at the Commission.

Having reviewed the petition filed by the Town and Staff's

memorandum in support thereof, we find that the request to reopen should be granted and that the project costs should be increased by approximately $343,252 in order to accommodate the amount of the lowest bid. The increase in project costs over what was previously approved will have no impact on customer rates since all of the money involved to cover the shortfall in the funding package will be grant money. Although the overall project costs will increase by $343,252, the scope of the project will not change. Given that neither the scope of the project nor the customer rates will change, we find that there is no public interest issue that would require further publication of the matter.

Further, as is consistent with Commission procedure, the Town shall be directed to again seek additional regulatory approval should the scope and/or funding for the project change.

FINDINGS OF FACT

1. The petition to reopen the instant certificate case filed by the Town of Gilbert on August 27, 1998, seeking approval of an increase in project costs in the amount of $343,252 should be granted. See, Further Final Joint Staff Memorandum filed September 16, 1998.

2. Neither the scope of the project nor customer rates will change as the money to cover the increased project costs will be provided through additional grant money committed by the Army Corps of Engineers. Id.; See, also August 25, 1998 letter from the Department of the Army, Huntington District, Corps of Engineers received on September 2, 1998, at the Commission.

3. Total project costs as identified by the Town's petition and approved herein will be $6,843,252 which consists of:

Small Cities Block Grant	$ 750,000
Army Corps of Engineers Grant	2,343,252
West Virginia Infrastructure Jobs & Development Grant	1,250,000
West Virginia Infrastructure Jobs & Development Loan	1,250,000
West Virginia DEP SRF Loan	1,250,000
Total	$6,843,252

See, August 27, 1998 petition filed by the Town of Gilbert and Further Final Joint Staff Memorandum filed September 16, 1998.

CONCLUSION OF LAW

The Commission concludes as a matter of law that it is reasonable to grant the Town of Gilbert's petition to reopen filed on August 27, 1998, and to approve the increased project costs as well as the revised financing in support thereof.

ORDER

IT IS THEREFORE ORDERED that the August 27, 1998 petition filed by the Town of Gilbert shall be and it hereby is granted. The instant case is hereby reopened for the specific purpose of approving an increase in project costs. Said costs are to be covered by an additional and increased commitment in grant money from the Army Corps of Engineers.

IT IS FURTHER ORDERED that the Town of Gilbert is hereby granted approval of the following funding package for its project:

Small Cities Block Grant	$ 750,000
Army Corps of Engineers Grant	2,343,252
West Virginia Infrastructure Jobs & Development Grant	1,250,000
West Virginia Infrastructure Jobs & Development Loan	1,250,000
West Virginia DEP SRF Loan	1,250,000
Total	$6,843,252

IT IS FURTHER ORDERED that the Town of Gilbert shall be, and it hereby is, directed to seek and obtain additional regulatory approvals in this case should there be further changes in either the scope of the project and/or funding for the project.

The Executive Secretary shall be, and she hereby is, directed to serve a copy of this order upon the Town of Gilbert by United States Certified Mail, return receipt requested, and upon Commission Staff by hand delivery.

AND IT IS SO ORDERED.

A True Copy, Teste:

Sandra Squire

Sandra Squire
Executive Secretary

94-0305.co3

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3.1(a)

September 29, 1998

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

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

Re: Town of Gilbert Sewerage System Revenue Bonds,
Series 1998 A

Gentlemen:

We are bond counsel to the Town of Gilbert (the "Local Government"), a municipal corporation.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated September 2, 1998, including all schedules and exhibits attached thereto, by and among the Local Government, the West Virginia Division of Environmental Protection and the West Virginia Water Development Authority (the "Authority") for the Series 1998 A Bonds (the "Loan Agreement") and (ii) the issue of a series of revenue bonds of the Local Government, dated September 29, 1998 (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Series 1998 A Bonds are in the principal amount of $1,250,000, issued in the form of one bond registered as to principal to the Authority, with the principal payable March 1, June 1, September 1, and December 1 of each year, beginning June 1, 2000, and shall bear no interest as set forth in "Schedule Y," attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Local Bonds are issued for the purpose of paying a portion of the costs of the construction of a sewerage collection and treatment system of the Local Government (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13, and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond ordinance duly enacted by the Local Government on September 14, 1998, effective September 14, 1998, as supplemented on September 14, 1998 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

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

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

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act on a parity with the Local Government's Series 1998 B Bonds issued simultaneously herewith and secured by a first lien on and pledge of the net revenues of said

System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision, or agency thereof.

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

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

Very truly yours,

Jackson & Kelly

CHASFS3:129558

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September 29, 1998

3.1(b)

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, West Virginia 25301

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

Re: Town of Gilbert Sewerage System Revenue Bonds,
Series 1998 B

Ladies and Gentlemen:

We are bond counsel to the Town of Gilbert (the "Local Government"), a public corporation and political subdivision of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the loan agreement dated September 29, 1998, including all schedules and exhibits attached thereto, by and between the Local Government, the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") (the "Loan Agreement") and (ii) the issue of a series of revenue bonds of the Local Government, dated September 29, 1998, (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $1,250,000, issued in the form of one bond registered as to principal and interest to the Authority, with both principal and interest payable March 1, June 1, September 1 and December 1 of each year, beginning on June 1, 2020, or on such earlier or later date as provided for in Section 5.03A(2) of the Local Act (as hereinafter defined), and shall bear interest at the rate of one percent (1%) per annum, as set forth in "Schedule Y," attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purpose of paying a portion of the costs of the acquisition and construction of the extensions, additions, betterments, and improvements to the existing of the sewerage collection and treatment system of the Local Government (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13, and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond ordinance duly enacted by the Local Government on September 14, 1998, as supplemented on September 14, 1998 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

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

3. The Local Government is a duly organized and presently existing public corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project and to operate and maintain the System referred

to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

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

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act on a parity with the Local Government's Series 1998 A Bonds issued simultaneously herewith, and secured by a first lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. Under existing laws, regulations, public rulings, and judicial decisions, interest on the Local Bonds is excludable from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. It should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining the adjusted current earnings. The opinions set forth above are subject to the condition that the Local Government comply, on a continuing basis, with all covenants, certifications, expectations and representations set forth in the Local Act, the Certificate as to Non-Arbitrage, and other certificates relating to tax-exemption and all requirements of Code that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. Failure to comply with certain of such Code provisions or covenants, certifications, expectations, or representations may cause the interest on the Local Bonds to be includable in gross income for federal income tax purposes retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

7. Based upon the certifications of the Local Government set forth in the Certificate as to Non-Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Local Bond are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Local Government comply, on a continuing basis, with all requirements of the Code relating to the

applicable exceptions to rebate. The Local Government has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Local Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Local Bonds.

8. The Local Bonds and the interest thereon are, under the Local Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision, or agency thereof.

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

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

Very truly yours,

Jackson & Kelly

CHASFS3:129562

PAMELA ANNE LAMBERT

ATTORNEY-AT-LAW

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P. O. BOX 200
JUSTICE, WV 24851
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September 29, 1998

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, WV 25301

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

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

Jackson & Kelly
P.O. Box 553
Charleton, WV 25322

Re: Town of Gilbert Sewer Project
$1,250,000.00 Sewerage System Revenue Bonds, Series 1998 A
$1,250,000.00 Sewerage System Revenue Bonds, Series 1998 B

Dear Ladies and Gentlemen:

I am counsel for the Town of Gilbert, West Virginia (the "Town"). As such counsel, I have examined copies of the approving opinions of Jackson & Kelly, as bong counsel, relating to the above-referenced bonds of the Town ("the Bonds"), the Loan Agreement by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP"), and the Town, dated September 2, 1998, for the Series 1998 A Bonds, the Loan Agreement by and between the Town and the Authority dated September 29, 1998, for the Series 1998 B Bonds (collectively, the "Loan Agreements"), and a Bond Ordinance duly enacted by the Council ("the Council") of the Town on September 14, 1998, effective September 14, 1998, as supplemented by a Supplemental Resolution adopted September 14, 1998 (collectively, the "Ordinance"), and other documents relating to the Bonds. Terms used in said opinions, the Loan Agreements, and Ordinance and not otherwise defined herein have the same meanings herein.

I am of the opinion that:

1. The Town is a duly created and validly existing municipal corporation and the Mayor, the Recorder and the other members of the Common Council were duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are thereby authorized to act on behalf of the Town in their respective capacities.

2. The Loan Agreements have each been duly authorized, executed and

delivered by the Town and, assuming due authorization, execution and delivery by the Authority, constitute a valid and binding agreements of the Town in accordance with their terms.

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

4. The execution and delivery of the Bonds and the Loan Agreements and the consummations of the transactions contemplated by the Loan Agreements, and the carrying out of the terms thereof, do not and will not in any material respect conflict with or constitute on the part of the Town a breach of or default under any agreement or other instrument to which the Town is a party or any existing law, regulation, court order of consent decree to which the Town is subject.

5. The Town has received all the necessary permits, licenses, approvals and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia, and has taken any other action required for the approval of such rates and charges, including, without limitations, the enactment of an ordinance prescribing such rates and charges. The Town has received form the Public Service Commission a Recommended Decision dated November 1, 1994, which became the Final Order of the Commission on November 21, 1997, in Case No. 94-0305-S--CN, granting the Town a certificate of convenience and necessity and approval of financing, as modified and revised by the Commission Order Conditionally Approving Additional Funding, dated January 23, 1998, an by the Commission Order approving increase in project costs and revised financing dated September 23, 1998. The Town has duly enacted a sewer rate ordinance on November 11, 1997, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates are currently in effect.

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

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

Sincerely,

Pamela A. Lambert

PAMELA A. LAMBERT
TOWNATTORNEY

PAL/st

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September 29, 1998

VIA FAX: 304-558-4609

Susan J. Riggs, Esq.
Executive Secretary
West Virginia Infrastructure and
Jobs Development Council
980 One Valley Square
Charleston, WV 25301

RE: TOWN OF GILBERT SEWERAGE SYSTEM PROJECT

Dear Ms. Riggs:

This firm has performed certain title work for the Town of Gilbert (the "Town") with regard to the above referenced project (the "Project") at the request of the Town's attorney, Pamela Lambert. This title opinion is being provided to you on behalf of the Town to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council. Please be advised of the following:

1. That I have investigated and ascertained the location of, and am familiar with the legal descriptions of, the necessary sites, including easements and rights of way, that have been identified by the Town in connection with this Project.

2. That I have examined the records on file in the Office of the Clerk of the County Commission of Mingo County, West Virginia, the county in which this project is to be located, and, in my opinion, the Town has acquired legal title or such other estate or interest in the necessary site components for the Project, including easements and rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation, and maintenance for the estimated life of the facilities to be constructed.

3. That the Town, if necessary, can and will institute formal condemnation proceedings within sixty days of the Town's issuance of a notice to proceed for the line portion of the Project to acquire the necessary site components, including easements or rights of way, for the Project to assure undisturbed use and possession for the estimated life of the facilities to be constructed.

4. That any deeds or other documents that have been acquired to date by the Town have been duly recorded or shall be recorded in the aforesaid Clerk's office in order to protect the title of the owner and the interest of the Town.

If you should have any questions regarding this matter or any of the information contained in this letter, please do not hesitate to contact me.

Very truly yours,

RONALD J. RUMORA

RJR:jg

CC. Christopher L. Callas, Esq. (Via fax: 304-340-1080)