

\$1,021,754
City of Kenova
Funding Assistance Series 2014
(West Virginia CWSRF Program)

Closing Date: March 13, 2014



CITY OF KENOVA
FUNDING ASSISTANCE (WEST VIRGINIA CWSRF PROGRAM)

Closing Date: March 13, 2014

TRANSCRIPT OF PROCEEDINGS

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State of West Virginia
 WATER DEVELOPMENT AUTHORITY
 1009 Bullitt Street, Charleston, WV 25301
 (304)414-6500 - (304)414-0865 (Fax)
 Internet: www.wvwda.org - Email: contact@wvwda.org

Date: 3/12/14 Time: 1:30 LGA: Kenova PSD Program: CDL/ITDC

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The Authority requests that they following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name: Missie Palmer Telephone: 304-453-1571 E-Mail: cityclerk@kenovawv.com
 Address: P.O. Box 208 Kenova, WV 25530

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the Non-Arbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code 1986 as amended.

**ARTICLE 135
Sanitary Board**

- | | |
|---|--|
| <p>135.01 Definitions.</p> <p>135.02 Creation of Sanitary Board.</p> <p>135.03 Composition; chairman; appointment of members.</p> <p>135.04 Organizational meetings; vice chairman, secretary, treasurer; official bonds.</p> <p>135.05 Compensation and expenses of Board members.</p> <p>135.06 Powers, duties and limitations.</p> | <p>135.07 Duties of Board to restore property damaged by its activities.</p> <p>135.08 Publication of financial statement.</p> <p>135.09 Procedure for disbursement of funds.</p> <p>135.10 Bonding of employees who handle money.</p> |
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CROSS REFERENCES

Composition of board - see W.Va. Code 16-13-18
 Publication of financial statement - see W.Va. Code 16-13-18a
 Powers and duties - see W.Va. Code 16-13-3 et seq.

135.01 DEFINITIONS.

The following words when used in this Article 135 shall, for the purpose of this Article have the following meanings ascribed to them:

- (a) "System" means the sanitary sewage system utilized by the City of Kenova, or any additions, extensions and improvements thereto, and future additions, extensions and improvements thereto;
- (b) "Act" means Chapter 16, Article 13 of the West Virginia Code of 1931, as amended.
(Ord. Eff. 5-16-91)

135.02 CREATION OF SANITARY BOARD.

Council of the City of Kenova does hereby create and establish a Sanitary Board, with all powers and duties as provided in and pursuant to the Act.
(Ord. Eff. 5-16-91)

135.03 COMPOSITION; CHAIRMAN; APPOINTMENT OF MEMBERS.

The Sanitary Board shall be composed of the Mayor of the City of Kenova, and two persons appointed by the City Council, one of whom, during the period of construction of the System or any additions thereto 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 System has been completed, the engineer may be succeeded by a person not an engineer. Said appointees shall originally be appointed for terms of 2 and 3 years, respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of 3 years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the City of Kenova, whether holding a paid or unpaid office, shall be eligible to appointment on said Sanitary Board until at least 1 year after the expiration of the term of his public office.

(Ord. Eff. 5-16-91)

135.04 ORGANIZATIONAL MEETINGS; VICE CHAIRMAN, SECRETARY, TREASURER; OFFICIAL BONDS.

As soon as may be practicable following the appointment of a new member of the Sanitary Board, the Board shall hold an organizational meeting and choose a vice chairman from among its members, and a secretary and treasurer, who may be one person and need not be a Board member, and such officers shall hold office at the will of the Board. No bond shall be required of the Board members as such, but the treasurer, whether a member of the Board or not, shall give bond in the penalty of \$2,000 for the proper application of all money received by him as treasurer of the Board, and otherwise conditioned according to law.

(Ord. Eff. 5-16-91)

135.05 COMPENSATION AND EXPENSES OF BOARD MEMBERS.

The members of the Sanitary Board as such shall be paid no compensation. All members of the Board shall be reimbursed from sewage works funds for all necessary expenses incurred in the discharge of their duties, but there shall be no liability upon the City for any salary or expenses so incurred. (Ord. Eff. 5-16-91)

135.06 POWERS, DUTIES AND LIMITATIONS.

(a) The Sanitary Board shall have the supervision and control of the custody, administration, operation and maintenance of any and all works for the collection, treatment and disposal of sewage, which are now owned or may hereafter be acquired by the City of Kenova

(b) The Sanitary 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 the powers granted to such Board by this article and under and by virtue of Article 13, of Chapter 16, of the Code of West Virginia, as the same now exists and may hereafter be amended; but the powers of the Sanitary Board shall be subject to all restrictions and limitations contained in said Article 13 as the same now exists or may hereafter be amended.

(c) The Sanitary Board may employ engineers, architects, inspectors, superintendents, a manager, collectors, attorneys and such other personnel 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 said Article 13 shall be paid solely and only from funds provided under the authority or power given it so as to bind the Board or the City beyond the extent to which money shall have been or may be provided under the authority of said Article 13. No contract or agreement with any contractor or contractors for labor or material exceeding in amount the sum of \$1,000 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 and all bids.

(d) 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 the Sanitary Board.

(e) After the construction, installation and completion of such works the Sanitary 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 made available as provided by law, 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 to do all things necessary or expedient for the successful operation thereof, and the Board shall have in addition hereto any and all powers granted to it by said Article 13, or which may be granted to it by amendments to said Article 13, hereafter made, subject to any and all restrictions and limitations therein contained.
(Ord. Eff. 5-16-91)

135.07 DUTIES OF BOARD TO RESTORE PROPERTY DAMAGED BY ITS ACTIVITIES.

All public ways or public works damaged or destroyed by the Sanitary Board in carrying out its authority under said Chapter 16 shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested so to do by the proper authorities, out of the funds provided pursuant to the provisions of Article 13, Chapter 16 of the Code of West Virginia.
(Ord. Eff. 5-16-91)

135.08 PUBLICATION OF FINANCIAL STATEMENT.

The Sanitary Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia, 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. The statement shall be sworn to by the chairman and secretary and treasurer of the Board. (Ord. Eff. 5-16-91)

135.09 PROCEDURE FOR DISBURSEMENT OF FUNDS.

All funds under the supervision of the Sanitary Board shall be disbursed, as disbursements are required, by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Board. All such disbursements shall be approved by the Board. (Ord. Eff. 5-16-91)

135.10 BONDING OF EMPLOYEES WHO HANDLE MONEY.

The Sanitary Board may from time to time, in its discretion, require any of its employees to furnish a good and suitable indemnity bond, with a recognized and reputable surety, conditioned upon the faithful discharge of their duties as such, and to deliver up and pay over all money as provided by law. The Board shall require all persons who collect or otherwise handle funds of the Board to furnish a good and proper bond, with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bond shall be in an amount equal to the sum of money which might at any one time be in the hands of such person or persons, as may be determined by the Board. (Ord. Eff. 5-16-91)

CITY OF KENOVA

ORDINANCE CREATING A SANITARY BOARD
OF THE CITY OF KENOVA

WHEREAS, the City of Kenova now contemplates the issuance of its Sewer Revenue Bonds to finance the acquisition, construction and equipping of a sanitary sewerage system, or additions, extensions and improvements thereto, and future additions, extensions and improvements (collectively, the "System"), pursuant to Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"); and

WHEREAS, the Act requires that a Sanitary Board be established in connection with the issuance of sewer revenue bonds, as aforesaid, and in connection with the custody, administration, operation and maintenance of such a sewer system by a municipal corporation;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF KENOVA AS FOLLOWS:

Section 1. That the Council of the City of Kenova does hereby create and establish a Sanitary Board, with all powers and duties as provided in and pursuant to the Act.

Section 2. Composition; Chairman; Appointment of Members. The Sanitary Board shall be composed of the Mayor of the City of Kenova, and two persons appointed by the City Council, one of whom, during the period of construction of the System or any additions thereto 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 System has been completed, the engineer may be succeeded by a person not an engineer. Said appointees shall originally be appointed for terms of 2 and 3 years, respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of 3 years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the City of Kenova, whether holding a paid or unpaid office, shall be eligible to appointment on said Sanitary Board until at least 1 year after the expiration of the term of his public office.

Section 3. Organizational Meetings; Vice Chairman, Secretary, Treasurer; Official Bonds. As soon as may be practicable following the appointment of a new member of the Sanitary Board, the Board shall hold an organizational meeting and choose a vice chairman

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from among its members, and a secretary and treasurer, who may be one person and need not be a Board member, and such officers shall hold office at the will of the Board. No bond shall be required of the Board members as such, but the treasurer, whether a member of the Board or not, shall give bond in the penalty of \$2,000 for the proper application of all money received by him as treasurer of the Board, and otherwise conditioned according to law.

Section 4. Compensation and Expenses of Board Members.

The members of the Sanitary Board as such shall be paid no compensation. All members of the Board shall be reimbursed from sewage works funds for all necessary expenses incurred in the discharge of their duties, but there shall be no liability upon the City for any salary or expenses so incurred.

Section 5. Powers, Duties and Limitations. A. The

Sanitary Board shall have the supervision and control of the custody, administration, operation and maintenance of any and all works for the collection, treatment and disposal of sewage, which are now owned or may hereafter be acquired by the City of Kenova.

B. The Sanitary 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 the powers granted to such Board by this chapter and under and by virtue of Article 13, of Chapter 16, of the Code of West Virginia, as the same now exists and may hereafter be amended; but the powers of the Sanitary Board shall be subject to all restrictions and limitations contained in said Article 13 as the same now exists or may hereafter be amended.

C. The Sanitary Board may employ engineers, architects, inspectors, superintendents, a manager, collectors, attorneys and such other personnel 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 said Article 13 shall be paid solely and only from funds provided under the authority or power given it so as to bind the Board or the City beyond the extent to which money shall have been or may be provided under the authority of said Article 13. No contract or agreement with any contractor or contractors for labor or material exceeding in amount the sum of \$1,000 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 and all bids.

D. 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 the Sanitary Board.

E. After the construction, installation and completion of such works the Sanitary 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 made available as provided by law, 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 to do all things necessary or expedient for the successful operation thereof, and the Board shall have in addition hereto any and all powers granted to it by said Article 13, or which may be granted to it by amendments to said Article 13, hereafter made, subject to any and all restrictions and limitations therein contained.

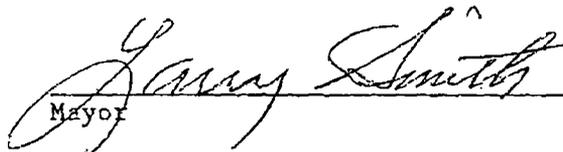
Section 6. Duty of Board to Restore Property Damaged by its Activities. All public ways or public works damaged or destroyed by the Sanitary Board in carrying out its authority under said Chapter 16 shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested so to do by the proper authorities, out of the funds provided pursuant to the provisions of Article 13, Chapter 16 of the Code of West Virginia.

Section 7. Publication of Financial Statement. The Sanitary Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia, 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. The statement shall be sworn to by the chairman and secretary and treasurer of the Board.

Section 8. Procedure for Disbursement of Funds. All funds under the supervision of the Sanitary Board shall be disbursed,

as disbursements are required, by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Board. All such disbursements shall be approved by the Board.

Section 9. Bonding of Employees Who Handle Money. The Sanitary Board may from time to time, in its discretion, require any of its employees to furnish a good and suitable indemnity bond, with a recognized and reputable surety, conditioned upon the faithful discharge of their duties as such, and to deliver up and pay over all money as provided by law. The Board shall require all persons who collect or otherwise handle funds of the Board to furnish a good and proper bond, with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bond shall be in an amount equal to the sum of money which might at any one time be in the hands of such person or persons, as may be determined by the Board.



Mayor

ATTEST:



Clerk

First Reading: May 7, 1991

Enacted on Second Reading and effective: May 16, 1991

08/07/91
KENSJ.D3
47214/91002

**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 11th day of March 2014.

CASE NO. 13-0710-S-CN

CITY OF KENOVA,
a municipality, Wayne County.

Application for a certificate of convenience and necessity for a wastewater improvement project in Wayne County.

COMMISSION ORDER

The Commission approves a request to use excess funds to expand the scope of a certificate project.

BACKGROUND

On May 20, 2013, the City of Kenova (Kenova) filed an application for a certificate of convenience and necessity to construct improvements to the existing wastewater system to separate the sanitary and storm sewer systems in order to prevent sewer overflows into the Ohio River. Kenova also requested a waiver of the requirement to file a Rule 42 exhibit because the project will be completely funded by grants from the West Virginia Infrastructure and Jobs Development Council (WVIJDC) and the Federal Clean Water Revolving Fund.

On May 28, 2013, the Commission referred this case to the Division of Administrative Law Judges (ALJ) with a decision due date of October 2, 2013.

On August 28, 2013, the Commission entered an order extending the ALJ decision due date to December 2, 2013 and tolled the running of the procedural deadline until January 15, 2014, pursuant to a request for continuance filed by Kenova.

On November 1, 2013, the ALJ entered a Recommended Decision (i) approving the certificate of convenience and necessity for a wastewater improvement project in Wayne County, at a total estimated cost of \$2,043,508, without specific approval of the project's plans and specifications, (ii) approving funding for the project, consisting of a \$1,021,754 forgivable loan from the West Virginia Division of Environmental Protection and a \$1,021,754 grant from the WVIJDC, and (iii) directing that if there are any changes

in the plans and/or scope of the project or if a change in project cost or financing affects rates Kenova obtain Commission approval of such changes prior to commencing construction.

On November 21, 2013, with no exceptions having been filed, the Recommended Decision became the final order of the Commission in this matter.

On February 7, 2014, Kenova filed a petition to reopen. Kenova stated that the final bids resulted in a \$419,131.20 under-run. As a result of the bid under-run, Kenova proposed to use the remaining funds to rehabilitate additional sanitary and storm sewer lines in the system, specifically,

- a. Add a sanitary sewer line to separate from storm sewer line and repair storm line from the east corner of the Wonderdome to the west end of the Beech/Walnut alley;
- b. Repair or replace sanitary sewer line from the South floodwall to Sycamore Street at 22nd Street;
- c. Replace or abandon the sanitary sewer from the 23rd Street alley to the CSX Railroad right-of-way;
- d. Connect Blue Chip Pallet Company to the sanitary sewer which would involve installing a grinder pump station and connecting to the existing force main (contingent);
- e. Repair the collapsed section of box culvert near outfall; and
- f. Clean and video various sewer lines (contingent).

Kenova asserted that its proposed use of the \$419,131.20 under-run was approved by the WVIJDC at its February 5, 2014 meeting. Kenova requested Commission consideration of its request prior to closing scheduled for March 12 and 13, 2014.

On February 11, 2014, Kenova filed a letter from the WVIJDC approving the request by Kenova to use \$419,131.20 under-run funds as described above.

On February 18, 2014, the Commission issued an order reopening this case and requiring Staff to submit a recommendation in this matter.

On February 25, 2014, Staff filed its Initial and Final Joint Staff Memorandum. Staff recommended that (i) Kenova complete as many of the proposed additional items as possible, using the remaining funds, (ii) the Commission approve the petition, and

(iii) the Commission should require Kenova to file actual bid tabulations when available and the engineer report once project is completed, with the report to include a description and percentage of the project that was completed.

DISCUSSION

The Commission will approve the use of the \$419,131.20 bid under-run to provide additional upgrades and improvements to the system, as described above and in the February 7, 2014 Kenova filing, because the additional work (i) was approved by the WVIJDC, (ii) is in the public interest, (iii) will not impact rates, and (iv) will not require additional funding.

FINDINGS OF FACT

1. Kenova seeks to use a \$419,131.20 bid under-run to provide additional upgrades and improvements to the system, as described above and in its February 7, 2014 filing.
2. The revised operation and maintenance expenses associated with the additional work will not affect the rates and charges of Kenova.
3. The WVIJDC approved the use of the \$419,131.20 bid under-run.
4. Staff recommended that (i) Kenova complete as many of the proposed additional items as possible, using the remaining funds, (ii) the Commission approve the petition, and (iii) the Commission should require Kenova to file actual bid tabulations when available and the engineer report once project is completed, with the report to include a description and percentage of the project that was completed.

CONCLUSION OF LAW

It is reasonable to approve the use of the \$419,131.20 bid under-run to provide additional upgrades and improvements to the system because the additional work was approved by the WVIJDC, is in the public interest, will not impact rates, and will not require additional funding.

ORDER

IT IS THEREFORE ORDERED that the scope of this certificate is revised to include additional upgrades and improvements to the system as described above and in the February 7, 2014 City of Kenova filing.

IT IS FURTHER ORDERED that the City of Kenova complete as many of the proposed additional items as possible, using the remaining funds.

IT IS FURTHER ORDERED that the City of Kenova file actual bid tabulations when available.

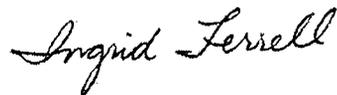
IT IS FURTHER ORDERED that the City of Kenova file a report showing percentages and descriptions of the work completed using the remaining \$419,131.20 under-run funding.

IT IS FURTHER ORDERED that the conditions contained in the ordering paragraphs of the November 1, 2013 (Final November 21, 2013) Recommended Decision remain in effect.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

JJW/s
130710cc.doc

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
11/21/2013

Issued: November 1, 2013

CASE NO. 13-0710-S-CN

CITY OF KENOVA,
a municipality, Wayne County.

Application for a certificate of convenience and necessity for a
wastewater improvement project in Wayne County.

RECOMMENDED DECISION

The application is granted, and the project and its funding are approved.

PROCEDURE

On May 20, 2013, the City of Kenova (City) filed with the Public Service Commission (Commission) an application for a certificate of convenience and necessity for a wastewater improvement project in Wayne County. The City explained that the project involves the installation of storm and sanitary lines, plus all appurtenances, such as sanitary and storm manholes, and is part of the City's overall project of separating storm and sewer systems in order to reduce sewer overflows into the Ohio River. It stated that the project has been approved by the West Virginia Infrastructure Jobs Development Council (WVIJDC) and that it will not necessitate any rate increase.

Also on May 20, 2013, the Commission directed the City to publish a Notice of Filing, which provided that, if no substantial protest was filed within thirty days after the date of publication, the Commission might waive formal hearing and grant the application based upon its review of the evidence submitted with the application.

On May 28, 2013, by Order, the Commission referred this matter to the Division of Administrative Law Judges (ALJ Division) for decision no later than October 1, 2013, if substantial protest was not filed and no later than November 1, 2013, if substantial protest was filed.

On June 4, 2013, the City by letter advised the Commission that it has no bulk customers.

On July 10, 2013, the City filed an affidavit of publication of the Notice of Filing on June 8, 2013, in the Wayne County News.

KAG

On August 12, 2013, a Final Joint Staff Memorandum was filed, recommending that the application be denied because of a funding discrepancy.

On August 16, 2013, the City filed a motion for tolling of the statutory deadline and an extension of the ALJ decision due date, which was granted by the Commission by Order of August 28, 2013. Noting that no protests had been filed, the Commission tolled the statutory deadline to January 15, 2014, and extended the ALJ decision due date until December 2, 2013.

On September 26, 2013, the City filed further information.

On October 15, 2013, the City filed commitment letters of funding for the project, which is estimated to cost \$2,043,508.

On October 28, 2013, a Further Joint Staff Memorandum was filed, recommending that the application be granted and the project and its funding be approved.

FINDINGS OF FACT

1. On May 20, 2013, the City of Kenova filed with the Public Service Commission an application for a certificate of convenience and necessity for a wastewater improvement project in Wayne County. (See application).

2. The project involves the separation of storm and sewer systems in order to reduce sewer overflows into the Ohio River. It will consist of the installation of 4,950 feet of storm line (with diameters of 12, 18 and 36 inches) and 860 feet of sewer line (with diameters of 6, 10 and 12 inches), as well as the construction of 7 sanitary manholes, 28 storm manholes, 28 storm drop inlets and 4,000 square feet of pavement replacement. (See application; Further Joint Staff Memorandum filed October 28, 2013).

3. The project has been approved by the West Virginia Infrastructure and Jobs Development Council and by the West Virginia Division of Environmental Protection, which issued its approval of the project's plans and specifications on September 17, 2013. (See application; filing of September 26, 2013; Further Joint Staff Memorandum).

4. The total project cost is estimated at \$2,043,508, including an estimated construction cost of \$1,864,507. (See Further Joint Staff Memorandum).

5. The project will be funded by a \$1,021,754 forgivable loan from the West Virginia Division of Environmental Protection and a \$1,021,754 grant from the West Virginia Infrastructure and Jobs Development Council. (See application; Further Joint Staff Memorandum; filing of October 15, 2013).

6. The City will not need to raise its sewer rates as a result of the project costs. (See application; Further Joint Staff Memorandum).

7. The project has not been bid. (See Further Joint Staff Memorandum).

8. Commission Staff recommended that the application be granted and the project and its funding be approved. (See Further Joint Staff Memorandum).

9. The City provided notice to its customers by publishing a Notice of Filing on June 8, 2013, in the Wayne County News, and no protest was filed. (See filing of July 10, 2013).

CONCLUSIONS OF LAW

1. It is appropriate to grant the application and to approve the project, pursuant to W.Va. Code §24-2-11, because the public convenience and necessity require the project.

2. It is appropriate to approve the funding for the project.

ORDER

IT IS, THEREFORE, ORDERED that the application filed on May 20, 2013, by the City of Kenova for a certificate of convenience and necessity for a wastewater improvement project in Wayne County, at a total estimated cost of \$2,043,508, is granted and the project is approved, without specific approval of the project's plans and specifications.

IT IS FURTHER ORDERED that the City of Kenova not proceed to construction unless and until it has received and filed with the Commission all required federal, state, and local permits.

IT IS FURTHER ORDERED that the funding for the project, consisting of a \$1,021,754 forgivable loan from the West Virginia Division of Environmental Protection and a \$1,021,754 grant from the West Virginia Infrastructure and Jobs Development Council, is approved.

IT IS FURTHER ORDERED that, if there are any changes in the plans and/or scope of the project or if a change in project cost or financing affects rates, the City of Kenova obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are any changes in the project costs that do not affect rates, the City of Kenova file an affidavit duly executed by its accountant verifying that the City's rates and charges are not affected.

IT IS FURTHER ORDERED that the City of Kenova file a copy of the engineer's certified tabulation of bids for the project within ten (10) days of the opening date.

IT IS FURTHER ORDERED that the City of Kenova file with the Commission a certificate of substantial completion for each contract awarded for the project from its engineer as soon as each becomes available.

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

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, and upon all parties of record who have not filed an e-service agreement with the Commission.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary 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.

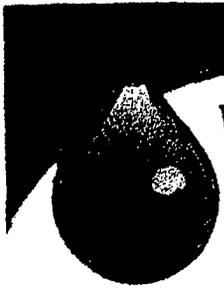
If no exceptions are so filed, this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

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 Executive Secretary. No such waiver will be effective until approved by order of the Commission.



Sunya Anderson
Administrative Law Judge

SA:s
130710a.docx



WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Earl Ray Tomblin
Chairman

Kenneth Lowe, Jr.
Public Member

Tom Plymale
Public Member

Ron Justice
Public Member

Louis R. Spatafore
Public Member

Joseph Freeland
Public Member

D. K. "Bud" Carr
Public Member

James W. Ellars, P.E.
Executive Director

Barbara J. Pauley
Executive Assistant

Tuesday, September 10, 2013

Linda Myles, City Clerk
City of Kenova, City of
P. O. Box 268
Kenova, WV 25530-0268

Re: City of Kenova
Sewer Project 2012S-1351
Preliminary Application Approved
IJDC Binding Commitment
(Action Required by Monday, September 30, 2013)

Dear Ms. Myles:

The West Virginia Infrastructure and Jobs Development Council (Council) has reviewed the preliminary application for the above-named project (Project). The Council provides this binding offer of an Infrastructure Fund grant for the above-referenced Project, contingent upon the issuance of the CWSRF binding commitment letter and the receipt of the delinquent annual budgets, audits and the financial report.

Funding Commitment:

Below is grant information for this Project:

CWSRF Debt Forgiveness - \$1,021,754.00 - Recommended
IJDC District 3 Grant - \$1,021,754.00 - Recommended

The Infrastructure Fund Grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Infrastructure Fund Grant amounts will be established after the Sponsor has received acceptable bids for the Project. The Council will set aside a portion of the Infrastructure Fund to make the Infrastructure Fund Grant upon the Sponsor's compliance with the program requirements.

If the Sponsor has any questions regarding this commitment, please contact James W. Ellars at (304) 414-6501.

Sincerely,

Kenneth Lowe, Jr.

Attachment

cc: DEP Rep Name, DEP
Kathryn K. Elliott, Region 2 - Planning & Development Council
Paul Ghosh, Ghosh Engineers Inc.
Todd F. Dingess, Smith Cochran Hicks PLLC
Test IJDC Legal, Jackson Kelly PLLC

NOTE: Please acknowledge receipt below, keep one original, and immediately return one copy to the Infrastructure Council.

CITY OF KENOVA

By: Richard W. Dingess

Its: MAYOR

Date: Sept 30, 2013

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

City of Kenova
Sewer Project No. 2012S-1351

SCHEDULE A

- A. Approximate Amount: \$1,021,754 Grant
- B. Grant: \$1,021,754
1. Grant Advancement Date(s): Monthly, upon receipt of proper requisition.
 2. Special Conditions: This commitment is contingent upon the issuance of the CWSRF binding commitment letter and the receipt of the delinquent annual budgets, audits and the financial report.

NOTICE: The terms set forth above are subject to change following the receipt of construction bids.

- C. Other Funding: CWSRF debt forgiveness \$1,021,754
- D. Total Project Cost: \$2,043,508
- E. Proposed User Rates: Approximately \$57.88 / 4000 gallons

SRF-PF-1
(07/13)

FUNDING ASSISTANCE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND FUNDING ASSISTANCE AGREEMENT (the "Funding Assistance 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 DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF KENOVA (2012S-1351/C-544095-02)
(Local Government)

W I T N E S S E T H:

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 22C, Article 2 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 acquire bonds of 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 utilize moneys from the Fund to provide funding assistance to local governments to provide the financing 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 (hereinafter “Funding Assistance”);

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 acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same from grants or other funding assistance;

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 filed with DEP, as hereinafter defined (the “Project”); and

WHEREAS, the Local Government is either a “disadvantaged community” as defined in the applicable Intended Use Plan, and/or meets the definition of decentralized treatment system as defined herein.

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 “Decentralized System” means wastewater treatment systems that treat wastewater, then reusing and/or dispersing the reclaimed water, as close to where it is generated as practical in each circumstance. A Decentralized System may include: on-site systems contained entirely within the simple boundaries of the lot it serves; small-scale collective systems, with their reuse/dispersal sites on easements on the lots served, on vacant lots purchased for this purpose, on off-site properties, or a combination of these; larger scale collective systems utilizing dispersed or aggregated reuse/dispersal sites or discharging to surface water.

1.4 “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.

1.5 “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.

1.6 “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 Funding Assistance 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 Funding Assistance.

1.7 “SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations, as amended.

1.8 “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.

1.9 Additional terms and phrases are defined in this Funding Assistance 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 filed with the DEP, 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 Funding Assistance Agreement and 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, during 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, in accordance with generally accepted governmental accounting standards. 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 Funding Assistance proceeds 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 and shall verify or have verified such bonds prior to commencement of construction.

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 and shall verify or have verified such insurance prior to commencement of construction. 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 Closing.

2.9 The Local Government shall provide and maintain competent and adequate 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 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 Record Drawings, 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 or updated Operation and Maintenance Manual, if necessary as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System as required by State law.

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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 20th of each month to the DEP and 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 such forms to DEP in compliance with the Local Government's construction schedule.

2.14 The Local Government, prior to the closing of the Funding Assistance, shall provide the DEP and the Authority with the opinion of local counsel, the form of which is attached hereto as Exhibit F and incorporated herein by reference.

ARTICLE III

Conditions to Advance of Funding Assistance

3.1 The agreement of the Authority and DEP to advance Funding Assistance hereunder:

(a) 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 filed with DEP; provided, that if the proceeds of the Funding Assistance will refund an interim construction financing, 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 filed with DEP; 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;

(b) 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;

(c) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and 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;

(d) 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 without successful appeal, and the Authority and DEP shall have received an opinion of local counsel to the Local Government, to such effect;

(e) Such rates and charges for the System shall be sufficient to comply with the provisions hereof, and the Authority and DEP shall have received a certificate of the accountant 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

(f) The Funding Assistance, 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 filed with DEP, 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 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements, established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

Other Agreements of the Local Government

4.1 Covenants substantially as follows:

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

(b) That the Local Government shall provide written notice and request approval of the disposition of the assets to the Authority and the DEP of any sale or other disposal of the System as a whole or substantially as a whole; provided that if said sale or other disposition is to a non-governmental entity the Local Government shall obtain an appraisal of the assets purchased with the Funding Assistance and remit to the Authority for deposit into the Clean Water Revolving Loan Fund an amount equal to the then depreciated value of the assets purchased;

(c) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System;

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

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

(f) 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 notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(g) 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;

(h) 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;

(i) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, 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; and

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

4.2 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 the Local Government in the terms and covenants of this Funding Assistance Agreement, 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 Funding Assistance Agreement.

4.3 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Funding Assistance Agreement, in the

application filed with DEP 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 Local Government receiving the Funding Assistance, the Authority and DEP shall have the right to cancel all or any of their obligations under this Funding Assistance Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Funding Assistance shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its application filed with DEP or in any supporting documentation or has violated any of the terms of the Act, the SRF Regulations or this Funding Assistance Agreement.

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

ARTICLE V

Miscellaneous

5.1 Schedule X shall be attached to this Funding Assistance Agreement by the Authority as soon as practicable after the Date of 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.

5.2 If any provision of this Funding Assistance 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 Funding Assistance Agreement, and this Funding Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

5.3 This Funding Assistance 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 Funding Assistance Agreement.

5.4 No waiver by any party of any term or condition of this Funding Assistance 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 Funding Assistance Agreement.

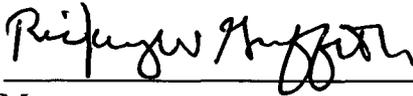
5.5 This Funding Assistance Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Funding Assistance and constitutes the entire agreement between the parties hereto in respect thereof.

5.6 This Funding Assistance Agreement shall terminate upon written notice of termination to the Local Government and the Authority by the DEP.

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

CITY OF KENOVA

(SEAL)

By: 

Its: Mayor

Date: March 13, 2014

Attest:


Its: City Clerk-Treasurer

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

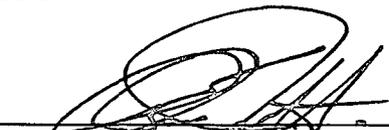
By: 

Its: Director

Date: March 13, 2014

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: 

Its: Executive Director

Date: March 13, 2014

Attest:

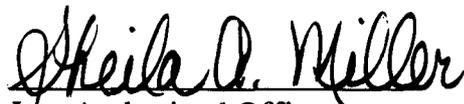

Its: Authorized Officer

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government _____
Name of Bond Issue(s) _____
Type of Project _____ **Water** _____ **Wastewater** _____
Fiscal Year _____ **Report Month** _____

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development Authority	_____	_____	_____	_____
Rural Utilities Service	_____	_____	_____	_____
Economic Development Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

Name of Person Completing Form

Address

Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ($\$1,200/12$). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ($\$900/12$). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 20th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

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 as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Funding Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____

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

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

bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xi) the Project was designed and will be constructed in compliance with the provisions of West Virginia Code Chapter 22, Article 29; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this _____ day of _____, _____.

By _____
West Virginia License No. __

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

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

B. **ASSET MANAGEMENT** – The Local Government shall submit an acceptable asset management plan or where applicable, updated plans, to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

C. **WAGE RATES** – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements.

D. **RENEWAL AND REPLACEMENT FUND** – The Local Government shall create or continue a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues of the System for the purpose of improving or making emergency repairs or replacements to the System.

E. **CLOSING REQUIREMENTS** – [Reserved.]

EXHIBIT F

OPINION OF LOCAL COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Closing]

[Name of Local Government]
_____, West Virginia

West Virginia Water Development Authority
1009 Bullitt Street
Charleston, WV 25301

West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Re: \$ _____ Funding Assistance (West Virginia Clean
Water SRF Program)

Ladies and Gentlemen:

[I am/We are] counsel to _____ (the "Local Government"), a
_____.

[I/We] have examined a certified copy of proceedings and other papers relating to the authorization of a Funding Assistance Agreement dated ____, 20__, including all schedules and exhibits attached thereto (the "Funding Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Funding Assistance Agreement and the Local Act.

The Funding Assistance is being provided for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

[I/We] have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the ordinance/resolution duly adopted or enacted by the Local Government on _____, 20__ (the "Local Act"), pursuant to and under which Local Statute and Local Act, the Funding Assistance is authorized and the Funding Assistance Agreement has been undertaken. The Funding

Assistance is forgivable at the end of each fiscal year in which funds are advanced for the Project.

Based upon the foregoing and upon [my/our] examination of such other documents as [I/we] have deemed necessary, [I am/we are] of the opinion as follows:

1. The Funding Assistance 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 Funding Assistance 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 the DEP 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 validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to enter into the Funding Assistance Agreement, all under the Local Statute and other applicable provisions of law.

4. The members and officers of the governing body of the Local Government have been duly and properly authorized and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Local Government in their respective capacities.

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

6. The execution and delivery of the Funding Assistance Agreement and the consummation of the transactions contemplated by the Funding Assistance Agreement and the Local Act, 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 Local Government, a breach of or default under any resolution, agreement or other instrument to which the Local Government is a party or any existing law, regulation, court order or consent decree to which the Local Government is subject.

7. The Local Government has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Local Government, the acceptance of the Funding Assistance, the acquisition and

construction of the Project, and the operation of the System, including, without limitation, all requisite permits, approvals, orders and certificates from _____, the DEP and the West Virginia Infrastructure and Jobs Development Council.

8. To the best of [my/our] knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Funding Assistance Agreement or the Local Act, the acquisition and construction of the Project, or the operation of the System.

9. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon our review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, [I am/we are] of the opinion that such surety bonds or policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Local Government; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Local Act and the Funding Assistance Agreement and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

10. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug-free workplace policy pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended. The contractor has submitted a plan to implement the drug-free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

11. The Local Government has received the PSC Order dated _____ in Case No. _____, approving the Project. The Order is in full force and effect.

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF FUNDING ASSISTANCE

Principal Amount of Funding Assistance \$1,021,754

The Authority at the direction of the DEP shall forgive the principal amount of the Funding Assistance. The principal amounts advanced under the Funding Assistance Agreement will be deemed forgiven on the 30th day of June in the fiscal year in which advanced.

Number of New Customers: 0
Location: Kenova, Wayne County.

CITY OF KENOVA

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENTIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF THE CITY OF KENOVA AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ACCEPTANCE OF FUNDING ASSISTANCE IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,021,754 THROUGH THE WEST VIRGINIA CLEAN WATER SRF PROGRAM AND A GRANT IN THE AMOUNT OF \$1,021,754 FROM THE WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO ACCEPTANCE OF SUCH FUNDING; APPROVING, RATIFYING AND CONFIRMING THE FUNDING ASSISTANCE AGREEMENT RELATING TO SUCH FUNDING ASSISTANCE AND APPROVING OTHER MATTERS RELATED THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF KENOVA

Section 1. Authority for this Ordinance. This Ordinance (together with any resolution supplemental hereto or amendatory hereof, or both, the "Ordinance") is enacted pursuant to the provisions of (i) Chapter 16, Article 13, and (ii) Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law;

Section 2. Findings. It is hereby found, determined and declared that:

A. The City of Kenova (the "Local Government") is authorized and empowered by the Act to acquire, construct, improve, operate and maintain a wastewater treatment project, as described in Exhibit A hereto, and to finance the cost of acquisition and construction of the same from grants or other funding assistance (the "Project");

B. The Local Government has submitted an application for the Project to the West Virginia Department of Environmental Protection (the "DEP") and the West Virginia Water Development Authority (the "Authority");

C. In reviewing the application for the Project, the DEP and the Authority have determined to offer funding assistance to the Local Government for the Project through a principal forgiveness loan (the "Funding Assistance") as provided in the Funding Assistance Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the "Funding Assistance Agreement");

D. The Funding Assistance Agreement has been presented to the Local Government;

E. The capitalized terms used herein and not otherwise defined shall have the same meaning set forth in the Funding Assistance Agreement when used herein;

F. The Local Government has complied with the terms and requirements set forth in the Funding Assistance Agreement; and

G. The Council of the Local Government (the "Governing Body") deems it essential and desirable that this Ordinance be enacted, that the Funding Assistance Agreement be approved and ratified, that the exact principal amount, date and other terms of the Funding Assistance be fixed hereby in the manner stated herein, and that other matters relating to the Funding Assistance be herein provided for.

Section 3. Authorization of Acquisition and Construction of Project.

A. There is hereby authorized and ordered the implementation of the Project at an estimated cost not to exceed \$2,043,508, which includes the acquisition and installation of the Project in accordance with the plans and specifications prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Funding Assistance hereby authorized shall be applied to the costs of the Project. The Local Government has received bids and will enter into contracts for the acquisition and installation of the Project, in an amount otherwise compatible with the financing plan submitted to the Authority and the DEP.

B. The cost of the Project is estimated not to exceed \$2,043,508 of which \$1,021,754 will be obtained from the proceeds of the Funding Assistance, and \$1,021,754 will be obtained from the proceeds of a grant from the West Virginia Infrastructure and Jobs Development Council.

Section 4. Authorization of Funding Assistance. The Local Government hereby ratifies, approves and accepts the Funding Assistance Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Funding Assistance Agreement by the Mayor of the Governing Body and the performance of the obligations contained therein, on behalf of the Local Government, are hereby authorized, approved and directed.

Section 5. General Covenants of Local Government. The Local Government hereby affirms all covenants and representations made in the Funding Assistance Agreement and in the application to the DEP. The Local Government hereby agrees to comply with all covenants, conditions and requirements set forth in the Funding Assistance Agreement.

Section 6. Disbursement of Proceeds. DEP shall advance the proceeds of the Funding Assistance from time to time upon receipt of a requisition evidencing the costs incurred, in the form provided on Exhibit C to the Funding Assistance Agreement. Such amounts

advanced under the Funding Assistance Agreement shall be deemed forgiven on the 30th day of June in the fiscal year in which they are advanced.

Section 7. Appointment of Depository Bank. The Local Government hereby appoints and designates United National Bank, Ceredo, West Virginia, to serve as Depository Bank for the Funding Assistance.

Section 8. Application of Proceeds. The proceeds of the Funding Assistance, as advanced from time to time, shall be deposited in or credited to the Construction Fund, as received by the Local Government for payment of costs of the Project, including costs of issuance of the Funding Assistance.

Section 9. Authorization to Execute and Deliver. The Mayor and City Clerk-Treasurer of the Governing Body are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Funding Assistance hereby and by the Funding Assistance Agreement approved and provided for, to the end that the Funding Assistance may be delivered to the Local Government pursuant to the Funding Assistance Agreement on or about March 13, 2014.

Section 10. Acknowledgement of Public Purpose. The acquisition and construction of the Project and the financing thereof with proceeds of the Funding Assistance are in the public interest, serve a public purpose of the Local Government and will promote the health, welfare and safety of the residents of the Local Government.

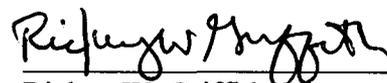
Section 11. Approval and Authorization of Contracts. The Local Government hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Mayor and Recorder/Clerk are hereby authorized and directed to execute and deliver all such contracts.

Section 12. Approval of Costs of Issuance. The Local Government hereby approves the costs of issuance and authorizes the payment of the same.

Section 13. Effective Date. This Ordinance shall be effective immediately following enactment of the same.

Passed on First Reading: February 20, 2014

Passed on Second Reading: February 27, 2014



Rickey W. Griffith, Mayor

CERTIFICATION

Certified as a true copy of an Ordinance duly entered by the Council of the City of Kenova on the 27th day of February, 2014.

Dated this 13th day of March, 2014.

[SEAL]


City Clerk - Treasurer

EXHIBIT A

PROJECT DESCRIPTION

The Project consists of separation of storm and sewer systems to reduce sewer overflows into the Ohio River, including the installation of 4,950 feet of storm line (with diameters of 12, 18 and 36 inches and 860 feet of sewer line (with diameters of 6, 10 and 12 inches), as well as construction of 7 sanitary manholes, 28 storm manholes, 28 storm drop inlets and 4,000 square feet of pavement replacement] and all necessary appurtenances thereto and certain additional items consisting of: (1) adding sanitary sewer line to separate from storm line and repairing storm line from east corner of Wonderdome to the west end of the Beech/Walnut alley; (2) repairing or replacing sanitary sewer line from the south floodwall to Sycamore Street at 22nd Street; (3) replacing or abandoning sanitary sewer from 23rd Street alley to the CSX Railroad right-of-way; (4) connecting Blue Chip Pallet Company to the sanitary sewer; (5) repairing a collapsed section of box culvert near the outfall; and (6) cleaning and videoing various sewer lines.

SRF-PF-1
(07/13)

FUNDING ASSISTANCE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND FUNDING ASSISTANCE AGREEMENT (the "Funding Assistance 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 DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF KENOVA (2012S-1351/C-544095-02)
(Local Government)

W I T N E S S E T H:

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 22C, Article 2 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 acquire bonds of 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 utilize moneys from the Fund to provide funding assistance to local governments to provide the financing 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 (hereinafter "Funding Assistance");

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 acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same from grants or other funding assistance;

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 filed with DEP, as hereinafter defined (the "Project"); and

WHEREAS, the Local Government is either a "disadvantaged community" as defined in the applicable Intended Use Plan, and/or meets the definition of decentralized treatment system as defined herein.

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 “Decentralized System” means wastewater treatment systems that treat wastewater, then reusing and/or dispersing the reclaimed water, as close to where it is generated as practical in each circumstance. A Decentralized System may include: on-site systems contained entirely within the simple boundaries of the lot it serves; small-scale collective systems, with their reuse/dispersal sites on easements on the lots served, on vacant lots purchased for this purpose, on off-site properties, or a combination of these; larger scale collective systems utilizing dispersed or aggregated reuse/dispersal sites or discharging to surface water.

1.4 “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.

1.5 “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.

1.6 “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 Funding Assistance 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 Funding Assistance.

1.7 “SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations, as amended.

1.8 “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.

1.9 Additional terms and phrases are defined in this Funding Assistance 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 filed with the DEP, 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 Funding Assistance Agreement and 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, during 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, in accordance with generally accepted governmental accounting standards. 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 Funding Assistance proceeds 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 and shall verify or have verified such bonds prior to commencement of construction.

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 and shall verify or have verified such insurance prior to commencement of construction. 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 Closing.

2.9 The Local Government shall provide and maintain competent and adequate 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 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 Record Drawings, 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 or updated Operation and Maintenance Manual, if necessary as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System as required by State law.

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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 20th of each month to the DEP and 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 such forms to DEP in compliance with the Local Government's construction schedule.

2.14 The Local Government, prior to the closing of the Funding Assistance, shall provide the DEP and the Authority with the opinion of local counsel, the form of which is attached hereto as Exhibit F and incorporated herein by reference.

ARTICLE III

Conditions to Advance of Funding Assistance

3.1 The agreement of the Authority and DEP to advance Funding Assistance hereunder:

(a) 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 filed with DEP; provided, that if the proceeds of the Funding Assistance will refund an interim construction financing, 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 filed with DEP; 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;

(b) 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;

(c) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and 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;

(d) 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 without successful appeal, and the Authority and DEP shall have received an opinion of local counsel to the Local Government, to such effect;

(e) Such rates and charges for the System shall be sufficient to comply with the provisions hereof, and the Authority and DEP shall have received a certificate of the accountant 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

(f) The Funding Assistance, 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 filed with DEP, 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 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements, established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

Other Agreements of the Local Government

4.1 Covenants substantially as follows:

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

(b) That the Local Government shall provide written notice and request approval of the disposition of the assets to the Authority and the DEP of any sale or other disposal of the System as a whole or substantially as a whole; provided that if said sale or other disposition is to a non-governmental entity the Local Government shall obtain an appraisal of the assets purchased with the Funding Assistance and remit to the Authority for deposit into the Clean Water Revolving Loan Fund an amount equal to the then depreciated value of the assets purchased;

(c) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System;

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

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

(f) 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 notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(g) 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;

(h) 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;

(i) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, 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; and

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

4.2 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 the Local Government in the terms and covenants of this Funding Assistance Agreement, 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 Funding Assistance Agreement.

4.3 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Funding Assistance Agreement, in the

application filed with DEP 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 Local Government receiving the Funding Assistance, the Authority and DEP shall have the right to cancel all or any of their obligations under this Funding Assistance Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Funding Assistance shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its application filed with DEP or in any supporting documentation or has violated any of the terms of the Act, the SRF Regulations or this Funding Assistance Agreement.

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

ARTICLE V

Miscellaneous

5.1 Schedule X shall be attached to this Funding Assistance Agreement by the Authority as soon as practicable after the Date of 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.

5.2 If any provision of this Funding Assistance 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 Funding Assistance Agreement, and this Funding Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

5.3 This Funding Assistance 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 Funding Assistance Agreement.

5.4 No waiver by any party of any term or condition of this Funding Assistance 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 Funding Assistance Agreement.

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

5.6 This Funding Assistance Agreement shall terminate upon written notice of termination to the Local Government and the Authority by the DEP.

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

CITY OF KENOVA

(SEAL)

By: _____

Its: Chairman

Attest:

Date: March 13, 2014

Its: City Clerk-Treasurer

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____

Its: Director

Date: March 13, 2014

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____

Its: Executive Director

Attest:

Date: March 13, 2014

Its: Authorized Officer

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government _____
 Name of Bond Issue(s) _____
 Type of Project _____ Water _____ Wastewater _____
 Fiscal Year _____ Report Month _____

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development Authority	_____	_____	_____	_____
Rural Utilities Service	_____	_____	_____	_____
Economic Development Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

Name of Person Completing Form

Address

Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ($\$1,200/12$). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ($\$900/12$). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 20th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

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 as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Funding Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____

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

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

bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xi) the Project was designed and will be constructed in compliance with the provisions of West Virginia Code Chapter 22, Article 29; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this _____ day of _____, _____.

By _____
West Virginia License No. __

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

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

B. **ASSET MANAGEMENT** – The Local Government shall submit an acceptable asset management plan or where applicable, updated plans, to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

C. **WAGE RATES** – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements.

D. **CLOSING REQUIREMENTS** – [Reserved.]

EXHIBIT F

OPINION OF LOCAL COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Closing]

[Name of Local Government]
_____, West Virginia

West Virginia Water Development Authority
1009 Bullitt Street
Charleston, WV 25301

West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Re: \$ _____ Funding Assistance (West Virginia Clean
Water SRF Program)

Ladies and Gentlemen:

[I am/We are] counsel to _____ (the "Local Government"), a
_____.

[I/We] have examined a certified copy of proceedings and other papers relating to the authorization of a Funding Assistance Agreement dated ____, 20__, including all schedules and exhibits attached thereto (the "Funding Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Funding Assistance Agreement and the Local Act.

The Funding Assistance is being provided for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

[I/We] have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the ordinance/resolution duly adopted or enacted by the Local Government on _____, 20__ (the "Local Act"), pursuant to and under which Local Statute and Local Act, the Funding Assistance is authorized and the Funding Assistance Agreement has been undertaken. The Funding

Assistance is forgivable at the end of each fiscal year in which funds are advanced for the Project.

Based upon the foregoing and upon [my/our] examination of such other documents as [I/we] have deemed necessary, [I am/we are] of the opinion as follows:

1. The Funding Assistance 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 Funding Assistance 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 the DEP 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 validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to enter into the Funding Assistance Agreement, all under the Local Statute and other applicable provisions of law.

4. The members and officers of the governing body of the Local Government have been duly and properly authorized and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Local Government in their respective capacities.

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

6. The execution and delivery of the Funding Assistance Agreement and the consummation of the transactions contemplated by the Funding Assistance Agreement and the Local Act, 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 Local Government, a breach of or default under any resolution, agreement or other instrument to which the Local Government is a party or any existing law, regulation, court order or consent decree to which the Local Government is subject.

7. The Local Government has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Local Government, the acceptance of the Funding Assistance, the acquisition and

construction of the Project, and the operation of the System, including, without limitation, all requisite permits, approvals, orders and certificates from _____, the DEP and the West Virginia Infrastructure and Jobs Development Council.

8. To the best of [my/our] knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Funding Assistance Agreement or the Local Act, the acquisition and construction of the Project, or the operation of the System.

9. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon our review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, [I am/we are] of the opinion that such surety bonds or policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Local Government; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Local Act and the Funding Assistance Agreement and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

10. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug-free workplace policy pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended. The contractor has submitted a plan to implement the drug-free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

11. The Local Government has received the PSC Order dated _____ in Case No. _____, approving the Project. The Order is in full force and effect.

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF FUNDING ASSISTANCE

Principal Amount of Funding Assistance \$_____

The Authority at the direction of the DEP shall forgive the principal amount of the Funding Assistance. The principal amounts advanced under the Funding Assistance Agreement will be deemed forgiven on the 30th day of June in the fiscal year in which advanced.

Number of New Customers: 0
Location: Kenova, Wayne County.

CITY OF KENOVA
FUNDING ASSISTANCE (WEST VIRGINIA CWSRF PROGRAM AND
INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL)

PETITION OF SANITARY BOARD

TO THE COUNCIL OF THE CITY OF KENOVA, WEST VIRGINIA:

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of the City of Kenova, West Virginia (the "City"), which was established pursuant to an ordinance passed by the Council of the City (the "Council") on May 16, 1991, hereby petitions the Council to enact an ordinance which shall:

(a) set forth a brief and general description of the additions, betterments and improvements to the existing public sewerage system (the "System") of the City, consisting of separation of storm and sewer systems to reduce sewer overflows into the Ohio River, including the installation of 4,950 feet of storm line (with diameters of 12, 18 and 36 inches) and 860 feet of sewer line (with diameters of 6, 10 and 12 inches), as well as construction of 7 sanitary manholes, 28 storm manholes, 28 storm drop inlets and 4,000 square feet of pavement replacement and all necessary appurtenances thereto, and certain additional items consisting of: (1) adding sanitary sewer line to separate from storm line and repairing storm line from east corner of Wonderdome to the west end of the Beech/Walnut alley; (2) repairing or replacing sanitary sewer line from the south floodwall to Sycamore Street at 22nd Street; (3) replacing or abandoning sanitary sewer from 23rd Street alley to the CSX Railroad right-of-way; (4) connecting Blue Chip Pallet Company to the sanitary sewer; (5) repairing a collapsed section of box culvert near the outfall; and (6) cleaning and videoing various sewer lines (collectively the "Project"), in accordance with plans and specifications prepared and filed by Ghosh Engineers, Inc., the engineers chosen by the Sanitary Board (the "Consulting Engineers");

(b) set forth the costs of the Project estimated by the Consulting Engineers;

(c) order the construction or acquisition of the Project;

(d) direct that Funding Assistance (West Virginia CWSRF Program) from the West Virginia Department of Environmental Protection be accepted by the City, in an aggregate principal amount not to exceed \$1,021,754, or in such other amount as is necessary to acquire and construct the Project;

(e) direct that a grant from the West Virginia Infrastructure and Jobs Development Council be accepted by the City, in an aggregate principal amount not to exceed \$1,021,754, or in such other amount as is necessary to acquire and construct the Project; and

(f) contain such other provisions as may be necessary in the premises.

The Sanitary Board respectfully represents to the Council that, during the construction of the Project, one of the two persons appointed to the Sanitary Board by the Council must be a registered professional engineer.

WITNESS my signature on this the 20th day of February, 2014.

SANITARY BOARD OF THE CITY OF
KENOVA


Chairman

P.S.C. W. Va. No. 17
Canceling P.S.C. W. Va. No. 16

CITY OF KENOVA, a municipal utility
OF
KENOVA, WEST VIRGINIA
RATES, RULES AND REGULATIONS FOR FURNISHING
SEWERAGE AND SEWAGE DISPOSAL SERVICE
at Kenova, Wayne County, West Virginia
Filed with THE PUBLIC SERVICE COMMISSION
of
WEST VIRGINIA

Issued February 16, 2012 Effective for all service rendered on or after February 28, 2012
or as otherwise provided herein

Issued by authority of an order of
The Public Service Commission of West Virginia
in Case No. 11-1513-S-MA final February 13, 2012
or as otherwise provided herein

Issued by CITY OF KENOVA, a municipal utility

By Richard W. Griffith
Mayor
Title

RULES AND REGULATIONS

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

STEP 1

SCHEDULE I

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial and industrial service.

(I) RATES (Customers with metered water supply)

- First 2,000 gallons used per month \$16.18 per 1,000 gallons
(N) (includes \$1.17 for WDA deficiency)
- (N) (includes \$1.19 for arrearage to Huntington and Eastern)
- All Over 2,000 gallons used per month \$12.76 per 1,000 gallons
(N) (includes \$0.93 for WDA deficiency)
- (N) (includes \$0.94 for arrearage to Huntington and Eastern)

(I,C) MINIMUM CHARGE

- No bill will be rendered for less than \$32.36 per month.
- (N) (includes \$2.35 for WDA deficiency)
- (N) (includes \$2.39 for arrearage to Huntington and Eastern)

DELAYED PAYMENT PENALTY

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

TAP FEE

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

- (C) A tap fee of \$500.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

- (I) Indicates increase
- (N) Indicates new
- (C) Indicates change in text

STEP 1

SCHEDULE I, (Continued)

(C) SECURITY DEPOSIT

The City may require any applicant for any service by the system to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the system. Such deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service and one-sixth (1/6) for all other service.

(C,I) LEAK ADJUSTMENT

When the bill reflects unusual consumption which can be attributed to leakage on the customers' side of the meter, the bill shall be recalculated at the rate of \$5.18 per thousand gallons. Any amount that the customer can prove did not enter the sanitary sewer system shall be credited at the full tariff rates. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill.

RETURNED CHECK CHARGE

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

(O) CITY NOT LIABLE

EMERGENCY RESTRICTION OF USE

In case of emergency, the City shall have the right to restrict the use of any part of the system in any reasonable manner for the protection of the system and the inhabitants of the City.

SEPARATE PAYMENTS NOT PERMITTED

The City shall not accept payment of a water or sewer bill separately, when the customer concerned owes for both water and sewer services. For non-payments of the charges for water and sewer services, or both, the City, after notice of discontinuance in accordance with the applicable Public Service Commission rules and regulations, shall shut off water services and lock the meter, and shall restore service only upon payment of all water and sewer charges and accrued penalties.

(C) Indicates change in text

(I) Indicates increase

(O) Indicates omission

SCHEDULE II

SURFACE OR GROUND WATER SURCHARGE

On or after July 1, 2010, whenever the utility has discovered that a customer's roof drain, downspout, storm sewer, or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - the surcharge in dollars
- A - the area under roof and/or the area of any other water collecting surface connected to the sanitary sewer, in square feet
- R - the measured monthly rainfall, in inches
- C - the City's approved rate per thousand gallons of metered water usage

.0006233 - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water

The utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

(C) The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the rules and regulations of the Public Service Commission of West Virginia.

(C) Indicates change in text

SCHEDULE III

(O) SURCHARGE – WATER DEVELOPMENT AUTHORITY DEFICIENCY

(O) SURCHARGE – HUNTINGTON SANITARY BOARD PAYABLE

(O) Indicates omission

(N)

STEP 2

EFFECTIVE MARCH 2014 OR ON THE DATE THE WDA DEFICIENCY IS ELIMINATED, IF THE WDA DEFICIENCY IS ELIMINATED PRIOR TO MARCH 2014.

SCHEDULE I

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial and industrial service.

RATES (Customers with metered water supply)

First	2,000 gallons used per month	\$14.96 per 1,000 gallons (includes \$1.19 for arrearage to Huntington and Eastern)
All Over	2,000 gallons used per month	\$11.79 per 1,000 gallons (includes \$0.94 for arrearage to Huntington and Eastern)

MINIMUM CHARGE

No bill will be rendered for less than \$29.92 per month.
(includes \$2.39 for arrearage to Huntington and Eastern)

DELAYED PAYMENT PENALTY

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

TAP FEE

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

A tap fee of \$500.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(N) Indicates new

(N)

STEP 2

EFFECTIVE MARCH 2014 OR ON THE DATE THE WDA DEFICIENCY IS ELIMINATED, IF THE WDA DEFICIENCY IS ELMINATED PRIOR TO MARCH 2014.

SCHEDULE I (Continued)

SECURITY DEPOSIT

The City may require any applicant for any service by the system to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the system. Such deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service and one-sixth (1/6) for all other service.

LEAK ADJUSTMENT

When the bill reflects unusual consumption which can be attributed to leakage on the customers' side of the meter, the bill shall be recalculated at the rate of \$5.18 per thousand gallons. Any amount that the customer can prove did not enter the sanitary sewer system shall be credited at the full tariff rates. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill.

RETURNED CHECK CHARGE

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

EMERGENCY RESTRICTION OF USE

In case of emergency, the City shall have the right to restrict the use of any part of the system in any reasonable manner for the protection of the system and the inhabitants of the City.

SEPARATE PAYMENTS NOT PERMITTED

The City shall not accept payment of a water or sewer bill separately, when the customer concerned owes for both water and sewer services. For non-payments of the charges for water and sewer services, or both, the City, after notice of discontinuance in accordance with the applicable Public Service Commission rules and regulations, shall shut off water services and lock the meter, and shall restore service only upon payment of all water and sewer charges and accrued penalties.

(N) Indicates new

(N)

STEP 2

SCHEDULE II

SURFACE OR GROUND WATER SURCHARGE

On or after July 1, 2010, whenever the utility has discovered that a customer's roof drain, downspout, storm sewer, or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - the surcharge in dollars
- A - the area under roof and/or the area of any other water collecting surface connected to the sanitary sewer, in square feet
- R - the measured monthly rainfall, in inches
- C - the City's approved rate per thousand gallons of metered water usage

.0006233 - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water

The utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the rules and regulations of the Public Service Commission of West Virginia.

(N) Indicates new

(N)

STEP 3

EFFECTIVE OCTOBER 2014 OR ON THE DATE THE DEFICINECIES TO THE HUNTINGTON SANITARY BOARD AND EASTERN STATES ARE ELMINATED, IF THE DEFICINECIES ARE ELMINATED PRIOR TO OCTOBER 2014.

SCHEDULE I

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial and industrial service.

RATES (Customers with metered water supply)

First	2,000 gallons used per month	\$13.74 per 1,000 gallons
All Over	2,000 gallons used per month	\$10.81 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than \$27.48 per month.

DELAYED PAYMENT PENALTY

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

TAP FEE

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

A tap fee of \$500.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(N) Indicates new

(N)

STEP 3

EFFECTIVE OCTOBER 2014 OR ON THE DATE THE DEFICINECIES TO THE HUNTINGTON SANITARY BOARD AND EASTERN STATES ARE ELMINATED, IF THE DEFICINECIES ARE ELMINATED PRIOR TO OCTOBER 2014.

SCHEDULE I, (Continued)

SECURITY DEPOSIT

The City may require any applicant for any service by the system to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the system. Such deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service and one-sixth (1/6) for all other service.

LEAK ADJUSTMENT

When the bill reflects unusual consumption which can be attributed to leakage on the customers' side of the meter, the bill shall be recalculated at the rate of \$5.18 per thousand gallons. Any amount that the customer can prove did not enter the sanitary sewer system shall be credited at the full tariff rates. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill.

RETURNED CHECK CHARGE

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

EMERGENCY RESTRICTION OF USE

In case of emergency, the City shall have the right to restrict the use of any part of the system in any reasonable manner for the protection of the system and the inhabitants of the City.

SEPARATE PAYMENTS NOT PERMITTED

The City shall not accept payment of a water or sewer bill separately, when the customer concerned owes for both water and sewer services. For non-payments of the charges for water and sewer services, or both, the City, after notice of discontinuance in accordance with the applicable Public Service Commission rules and regulations, shall shut off water services and lock the meter, and shall restore service only upon payment of all water and sewer charges and accrued penalties.

(N) Indicates new

(N)

STEP 3

SCHEDULE II

SURFACE OR GROUND WATER SURCHARGE

On or after July 1, 2010, whenever the utility has discovered that a customer's roof drain, downspout, storm sewer, or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

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The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the rules and regulations of the Public Service Commission of West Virginia.

(N) Indicates new

CERTIFICATE OF CONSULTING ENGINEER

CITY OF KENOVA
FUNDING ASSISTANCE (WEST VIRGINIA CWSRF PROGRAM)

I, Pulak Ghosh, Registered Professional Engineer, West Virginia License No. 7806, of Ghosh Engineers, Inc., Consulting Engineers, Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of additions and betterments to the existing sewerage system (the "Project") of the City of Kenova (the "Issuer"), to be constructed primarily in Wayne County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the Funding Assistance Ordinance enacted by the Issuer on February 27, 2014, and the Funding Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated March 13, 2014.

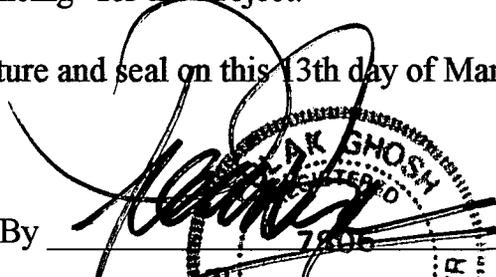
2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 30 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and in reliance upon the opinion of Debra C. Price, Esq., all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform

bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) in reliance upon the certificate of Smith Cochran & Hicks, PLLC, independent certified public accountants, of even date herewith, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xi) the Project was designed and will be constructed in compliance with the provisions of West Virginia Code Chapter 22, Article 29; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 13th day of March 2014.

By


Pulak Ghosh
West Virginia Professional Engineer License No. 7806

[SEAL]

CITY OF KENOVA - Wastewater Rehabilitation Project

CWSRF Project Number C - 544095-02

Post Bid Schedule B

A. COST OF PROJECT	SRF Loan Forgiveness	IJDC Grant	TOTAL
1 Construction			
a Construction	\$ 784,477	\$ 600,190	\$ 1,384,667
b Additional Construction	\$ -	\$ 335,554	\$ 335,554
c Construction Contingency 5%	\$ -	\$ 86,010	\$ 86,010
2 Technical Services			
a Planning	\$ -	\$ -	\$ -
b Basic Design	\$ 55,000	\$ -	\$ 55,000
c Engineering during Construction	\$ 39,000	\$ -	\$ 39,000
d Resident Inspection	\$ 31,000	\$ -	\$ 31,000
e Design for additional projects	\$ 29,800	\$ -	\$ 29,800
f Resident Inspection for Additional projects	\$ 7,000	\$ -	\$ 7,000
g Asset Management (per DEP requirement)	\$ 30,000	\$ -	\$ 30,000
3 Legal			
a PSC	\$ 8,000	\$ -	\$ 8,000
b Project Attorney	\$ 2,000	\$ -	\$ 2,000
4 Accounting	\$ 5,477	\$ -	\$ 5,477
5 Administration (Region II)	\$ 30,000	\$ -	\$ 30,000
6 Sites & ROWs	\$ -	\$ -	\$ -
7 Land Acquisition	\$ -	\$ -	\$ -
8 Other			
a Legal Ads	\$ -	\$ -	\$ -
b Permits, fees	\$ -	\$ -	\$ -
9 Contingency	\$ -	\$ -	\$ -
10 SUBTOTAL Lines 1 through 9	\$ 1,021,754	\$ 1,021,754	\$ 2,043,508
B. COST OF FINANCING			
11 Funded Reserve	\$ -	\$ -	\$ -
12 Registrar	\$ -	\$ -	\$ -
13 Bond Counsel	\$ -	\$ -	\$ -
14 SUBTOTAL Lines 11 through 12	\$ -	\$ -	\$ -
15 TOTAL COST OF PROJECT (Line 10 plus line 14)	\$ -	\$ -	\$ -
C. SOURCES OF FUNDS			
16 Federal Grants (SCBG)			
17 State Grant (IJDC)	\$ 1,021,754	\$ 1,021,754	
18 CWSRF Principal Forgiveness Loan	\$ 1,021,754		\$ 1,021,754
19 Other (Federal Grant--STAG)			
20 SUBTOTAL GRANTS Lines 16 through 19	\$ 2,043,508	\$ 1,021,754	\$ 1,021,754
20 SIZE OF BOND ISSUE	\$ -	\$ -	\$ -

Rick... [Signature]
 Sanitary Board of Kenova

[Signature]
 Ghosh Engineers, Inc.

2-25-2014

Date

Date



smithcochranhicks PLLC

CERTIFIED PUBLIC ACCOUNTANTS

CITY OF KENOVA
FUNDING ASSISTANCE (WEST VIRGINIA CWSRF PROGRAM)

March 13, 2014

City of Kenova
Kenova, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have reviewed the sewer rates of the City of Kenova (the "City"), approved by the Public Service Commission of West Virginia in Case No. 11-1513-S-MA, the projected operating expenses and the anticipated customer usage provided by Ghosh Engineers, Inc., the consulting engineer of the City. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the sewer facilities of the City (the "System"), and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of principal of and interest on the City's Sewer Revenue Bonds, Series 1991 A; Sewer Revenue Bonds, Series 1991 B; Sewer Revenue Bonds, Series 2007 A (West Virginia Infrastructure Fund); and Sewer Revenue Bonds, Series 2007 B (West Virginia SRF Program) (collectively, the "Prior Bonds").

It is further our opinion that the City is in compliance with all covenants contained in the ordinances authorizing the Prior Bonds.

Very truly yours,

SMITH COCHRAN & HICKS, PLLC

CITY OF KENOVA
FUNDING ASSISTANCE (WEST VIRGINIA CWSRF PROGRAM)

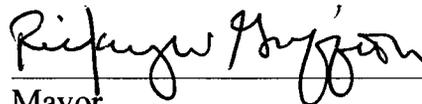
RECEIPT FOR FUNDING ASSISTANCE PROCEEDS

The undersigned Mayor of the City of Kenova (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 13th day of March, 2014, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), on behalf of the Clean Water State Revolving Fund, pursuant to a Funding Assistance Agreement between the Authority, the Issuer and the West Virginia Department of Environmental Protection dated March 13, 2014 (the "Funding Assistance"), of the \$80,453, being a portion of the \$1,021,754 principal amount of the Funding Assistance. The Issuer understands that the remaining proceeds of the Funding Assistance will be advanced to the Issuer from time to time as design proceeds to completion.

WITNESS my signature on this 13th day of March, 2014.

CITY OF KENOVA



Mayor

WEST VIRGINIA MUNICIPAL BOND COMMISSION

Suite 1117

900 Pennsylvania Ave., Charleston, WV 25302

(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: March 13, 2014

ISSUE: City of Kenova Funding Assistance (CWSRF)

ADDRESS: P.O. Box 268, Kenova, WV 25530 COUNTY: Wayne

PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: March 13, 2014 CLOSING DATE: March 13, 2014

ISSUE AMOUNT: \$1,021,754 RATE: Principal Forgiveness

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Debra C. Price, Esq. UNDERWRITER'S COUNSEL: Jackson Kelly PLLC
Contact Person: Debra C. Price Contact Person: Samme L. Gee, Esquire
Phone: (304) 586-2985 Phone: (304) 340-1318

CLOSING BANK: United Bank—Ceredo ESCROW TRUSTEE: _____
Contact Person: Gloria McClung Contact Person: _____
Phone: (304) 781-2401 Phone: _____
E-Mail: _____

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVCWSRF
Contact Person: Melissa K. Palmer Contact Person: Rose Brodersen
Position: City Clerk Function: Program Manager
Phone: (304) 453-1571 Phone: (304) 926-0449 ext 1608
E-Mail: cityclerk@kenovawv.com

DEPOSITS TO MBC AT CLOSE: _____ Accrued Interest: \$ _____
_____ Capitalized Interest: \$ _____
By _____ Wire _____ Reserve Account: \$ _____
_____ Check _____ Other: \$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: \$ _____
_____ Check _____ To Issuer: \$ _____
_____ IGT _____ To Cons.Invest.Fund \$ _____
_____ To Other: \$ _____

NOTES: Principal forgiveness.

FOR MUNICIPAL BOND COMMISSION USE ONLY:

Documents Required: _____
Transfers Required: _____

CLOSING MEMORANDUM

**To: Rose Brodersen, WV DEP
 Sheila Miller, WV WDA**

From: City of Kenova

Date: March 13, 2014

Re: City of Kenova Funding Assistance (CWSRF) (2012S-1351/C-544095-02)

DISBURSEMENTS TO DISTRICT

Payor: West Virginia Clean Water SRF
Source: CWSRF Funding Assistance
Amount: \$80,453
Date: March 13, 2014
Form: Wire
Payee: City of Kenova
Bank: United Bank – Ceredo
Bank Address: 555 C Street
 Ceredo, WV 25507
Bank Contact: Gloria McClung
 (304) 781-2401
Wire Routing #: 051900395
Account Number: 68399321
Account: Construction Trust Fund

cc: Samme Gee

SRF PAYMENT REQUISITION FORM

Rev 04/07/09

- | | |
|---|---|
| 1. <u>LOAN RECIPIENT/VENDOR:</u> | 2. <u>SRF #: C-544095-02</u> |
| NAME: <u>City of Kenova</u> | 3. <u>INVOICE NUMBER: 1</u> |
| ADDRESS: <u>1501 Pine Street P.O. Box 268</u> | 4. <u>PERIOD COVERED BY THIS REQUEST (MO/DAY/YR)</u> |
| <u>Kenova, WV 25530</u> | FROM: (MO/DAY/YR) <u>12/8/2011</u> TO: (MO/DAY/YR) <u>3/14/2014</u> |
| FEIN: <u>55-6000190</u> | 5. <u>% PHYSICAL CONSTRUCTION COMPLETION</u> <u>0%</u> |
| DUNS: <u>068134659</u> | |

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED	C) THIS REQUEST	D) TOTAL COLUMNS B&C	E) AGENCY USE ONLY
					SRF
1) CONSTRUCTION	\$ 784,477		\$ -	\$ -	
2) EQUIPMENT					
3) ENGINEERING					
a. Planning					
b. Design	\$ 84,800		\$ 55,264	\$ 55,264	55,264
c. Const Basic	\$ 39,000				
d. Spec Svcs	\$ 30,000			\$ -	
e. Inspection	\$ 38,000			\$ -	
4) LEGAL	\$ 10,000		\$ 9,712	\$ 9,712	9,712
5) ACCOUNTING	\$ 5,477		\$ 5,477	\$ 5,477	5,477
6) ADMINISTRATIVE	\$ 30,000		\$ 10,000	\$ 10,000	10,000
7) CONTINGENCY	\$ -			\$ -	
8) PERMITS	\$ -			\$ -	
9) RESERVE FUND					
10) CLOSING COSTS	\$ -			\$ -	
11) SUBTOTAL	\$ 1,021,754	\$ -	\$ 80,453	\$ 80,453	80,453
12) LESS PREVIOUSLY PAID				\$ -	0
13) INVOICE AMOUNT				\$ 80,453	80,453

14) <u>Rickey W. Griffith</u> 2/27/2014 AUTHORIZED SIGNATURE DATE Rickey W. Griffith, Mayor TYPED OR PRINTED NAME AND TITLE	15) <u>Kathy Kelley Elliott</u> 2/27/2014 PERSON PREPARING FORM SIGNATURE DATE Kathy Kelley Elliott, Sr. Project Administrator TYPED OR PRINTED NAME AND TITLE
---	--

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: <u>[Signature]</u> 3/4/14 PROJECT REVIEWER DATE	WV DEPARTMENT OF ENVIRONMENTAL PROTECTION <u>[Signature]</u> 3/5/14 AUTHORIZED OFFICER DATE
--	--

GRANT AGREEMENT
(2012S-1351)

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), at the direction of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the City of Kenova (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 \$1,021,754 (the "Grant") for the purposes of the design, acquisition or construction 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 purposes of designing, acquiring or constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Grant Agreement sets forth the Council, the Authority and the Governmental Agency's understandings 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. The Project budget shall not be amended unless the Governmental Agency has received the prior written consent of the Council.

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. Unless agreed to by the Council prior to the commencement of construction, the Grant shall be the last dollars expended on the Project.

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 Authority shall wire the approved requisition amount using the wiring instructions provided in Exhibit B, unless the Council and Authority are provided replacement instructions in writing.

6. 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.

7. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

8. The Governmental Agency shall list the Grant provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

9. This Grant 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.

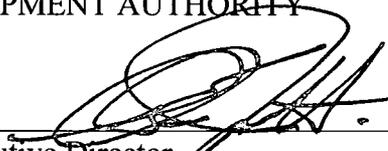
CITY OF KENOVA

By: 
Its: Mayor
Date: March 13, 2014

(SEAL)

Attest: 
Its: City Clerk/Treasurer

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: 
Its: Executive Director
Date: March 13, 2014

(SEAL)

Attest: 
Its: Authorized Officer

Exhibit A

Project Description

The Project consists of construction and acquisition of separation of storm and sanitary sewers, and all necessary appurtenances thereto.

Number of Proposed New Customers to Be Served: 0

Location: City of Kenova

TAYLOR AND PRICE PLLC

3288 WINFIELD ROAD
POST OFFICE BOX 224
WINFIELD, WEST VIRGINIA 25213
304.586.2985
FACSIMILE - 866-783.0511

March 13, 2014

City of Kenova
Kenova, West Virginia

West Virginia Water Development Authority
1009 Bullitt Street
Charleston, WV 25301

West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Re: \$1,021,754 Funding Assistance (West Virginia Clean Water SRF
Program)

Ladies and Gentlemen:

I am counsel to the City of Kenova (the "Local Government"), a municipal corporation and political subdivision of the State of West Virginia.

I have examined a certified copy of proceedings and other papers relating to the authorization of a Funding Assistance Agreement dated March 13, 2014, including all schedules and exhibits attached thereto (the "Funding Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Funding Assistance Agreement and the Local Act.

The Funding Assistance is being provided for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project, and (ii) paying certain issuance and other costs in connection therewith.

I have also examined the applicable provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the ordinance duly enacted by the Local Government on February 27, 2014 (the "Local Act"), pursuant to and under which Local Statute and Local Act, the Funding Assistance is authorized and the Funding Assistance Agreement has been undertaken. The Funding Assistance is forgivable at the end of each fiscal year in which funds are advanced for the Project.

Based upon the foregoing and upon my examination of such other documents as I have deemed necessary, I am of the opinion as follows:

1. The Funding Assistance 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 Funding Assistance 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 the DEP 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 validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Local Act and to enter into the Funding Assistance Agreement, all under the Local Statute and other applicable provisions of law.

4. The members and officers of the governing body of the Local Government have been duly and properly authorized and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Local Government in their respective capacities.

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

6. The execution and delivery of the Funding Assistance Agreement and the consummation of the transactions contemplated by the Funding Assistance Agreement and the Local Act, 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 Local Government, a breach of or default under any resolution, agreement or other instrument to which the Local Government is a party or any existing law, regulation, court order or consent decree to which the Local Government is subject.

7. The Local Government has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Local Government, the acceptance of the Funding Assistance, the acquisition and construction of the Project, and the operation of the System, including, without limitation, all requisite permits, approvals, orders and certificates from the Public

Service Commission of West Virginia, the DEP and the West Virginia Infrastructure and Jobs Development Council.

8. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Funding Assistance Agreement or the Local Act, the acquisition and construction of the Project, or the operation of the System.

9. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds or policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Local Government; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Local Act and the Funding Assistance Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

10. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug-free workplace policy pursuant to Chapter 21, Article 1D of the Code of West Virginia, 1931, as amended. The contractor has submitted a plan to implement the drug-free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the Code of West Virginia, 1931, as amended.

11. The Local Government has received PSC Orders dated November 1, 2013, and March 11, 2014, in Case No. 13-0710-S-CN, approving the Project. Both Orders are in full force and effect.

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

Very truly yours,



Debra C. Price