

**THE CITY OF KENOVA**

**Sewer Revenue Bonds,  
Series 1991A and Series 1991B**

**BOND TRANSCRIPT**

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**THE CITY OF KENOVA**  
**SEWER REVENUE BONDS,**  
**SERIES 1991A AND SERIES 1991B**  
**and**  
**SEWERAGE SYSTEM INTERIM CONSTRUCTION FINANCING**

**BOND AND NOTES ORDINANCE**

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THE CITY OF KENOVA

ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF KENOVA AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1991A, NOT MORE THAN \$100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1991B, AND NOT MORE THAN \$500,000 INTERIM CONSTRUCTION FINANCING, CONSISTING OF BOND ANTICIPATION NOTES, GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND AUTHORIZING OR RATIFYING AND CONFIRMING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Kenova (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Wayne County of said State.

B. The Issuer presently owns and operates a public sewerage system; however, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements for the existing sewerage facilities of the Issuer, consisting of approximately 7,775 linear feet of 16-inch force main, 70 linear feet of 30-inch steel casing pipe, renovations to an existing lift station, a new lift station, two diversion manholes and two mounted generators, together with all appurtenant facilities (collectively, the "Project") which constitute properties for the collection and transportation of liquid or solid wastes, sewage or industrial wastes (the existing sewerage facilities of the Issuer, the Project and any further additions, improvements and betterments thereto or extensions thereof is herein called the "System") at an estimated cost of \$1,258,166, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds and all Sinking Funds, Reserve Accounts and other payments provided for herein, all as such terms are hereinafter defined.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of not more than \$700,000 in two series, being the Series 1991A Bonds in the aggregate principal amount of not more than \$600,000, and the Series 1991B Bonds in the aggregate principal amount of not more than \$100,000 (collectively, the "Original Bonds"), and (at the option of the Issuer) to issue its sewerage system bond anticipation notes prior to issuance of the Original Bonds and to issue, contemporaneously therewith or as soon as practicable thereafter, its sewerage system grant anticipation notes and/or a note or notes evidencing a line of credit, or any combination of the foregoing (collectively, the "Notes"), in the aggregate principal amount of not more than \$500,000 to temporarily finance costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes during the term thereof and upon the Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition or construction of the Project; amounts which may be deposited in the

Reserve Accounts; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and the Notes and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, including, with respect to the Notes, any fees for the providing of a letter of credit, as hereinafter defined, and any costs of obtaining insurance thereon; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the Notes or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Original Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement and a supplemental loan agreement to be entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority, as shall be approved by supplemental resolution.

G. There are no outstanding bonds or obligations of the Issuer which will rank senior and prior to or on parity with the Bonds as to lien, pledge and/or source of and security for payment.

The Series 1991A Bonds shall be issued senior and prior to the Series 1991B Bonds with respect to lien, pledge and source of and security for payment and in all other respects. The Series 1991B Bonds shall be issued junior and subordinate to the Series 1991A Bonds with respect to lien, pledge and source of and security for payment and in all other respects. The Grant Anticipation Notes, if issued, will not be payable from the Net Revenues, but shall be payable from Grant Receipts, Surplus Revenues, certain proceeds of such Grant Anticipation Notes and/or proceeds of a letter of credit, if any, all as shall be set forth in the Indenture and/or the Supplemental Resolution authorizing the Notes or the Grant Anticipation Notes. The Bond Anticipation Notes, if issued, will be payable from the proceeds of the Bonds (or individual series thereof), certain proceeds of such Bond Anticipation Notes and/or Net Revenues, if necessary and if

available, all as shall be set forth in the Indenture and/or the Supplemental Resolution authorizing the Notes or such Bond Anticipation Notes.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Bonds or any of the Notes or such final order will not be subject to appeal.

I. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Bonds and the Notes, as needed for the purposes set forth herein.

J. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the net proceeds of the issues of the Original Bonds and the Notes are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(D) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Notes and/or the Bonds are to be issued.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Original Bonds and the Notes by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Original Bonds and Notes, respectively, all which shall be of equal rank and without preference, priority or distinction between any one Original Bond of a series and any other Original Bonds of the same series and between any one Note of a series and any other Note of the same

series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

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

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

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

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

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

"Bonds" means the Original Bonds and, where appropriate, any bonds on a parity therewith authorized to be issued hereunder.

"City Clerk," "Clerk," "City Clerk-Treasurer" or "Recorder" means the City Clerk-Treasurer of the Issuer.

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

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

"Consulting Engineers" means Kelley, Gidley, Blair & Wolfe, Inc., Charleston, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

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

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" means the grant from the EPA pursuant to the commitment therefor.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" or "Board" means the City Council of the Issuer, as it may now or hereafter be constituted.

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

"Grant" means the EPA Grant.

"Grant Agreement" means a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" means only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" means only those Grant Agreements relating to the Other Grants.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant after the date of issuance of any Grant

Anticipation Notes; provided that, "EPA Grant Receipts" means only Grant Receipts on account of the EPA Grant, and "Other Grant Receipts" means only Grant Receipts on account of any or all of the Other Grants.

"Grants" means, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

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

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

"Indenture" or "Trust Indenture" means the Trust Indenture which may, at the Issuer's option, be entered into between the Issuer and the Trustee relating to any or all of the Notes and all supplements or amendments thereto.

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

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

"Issuer" or "City" means The City of Kenova, in Wayne County, West Virginia, and, unless the context clearly indicates

otherwise, includes the Governing Body and Sanitary Board of the Issuer.

"Loan Agreement" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement, to be entered into between the Authority and the Issuer providing for the purchase of the Original Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

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

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

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

"Noteholder," "Holder of the Notes" or any similar term means the person, whenever used herein with respect to an outstanding Note or Notes, in whose name such Note is registered.

"Notes" means collectively, the not more than \$500,000 in aggregate principal amount of sewerage system bond anticipation notes, grant anticipation notes and/or notes evidencing a line of credit, or any combination of the foregoing, and originally authorized hereby, which may be issued by the Issuer, the terms of which shall be set forth in a Supplemental Resolution, and unless the context clearly indicates otherwise, the term "Notes" includes any refunding Notes of the Issuer.

"Notes Construction Trust Fund" means the Notes Construction Trust Fund which may be established by the Indenture.

"Notes Debt Service Fund" means the Notes Debt Service Fund which may be established by the Indenture.

"Notes Registrar" means the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

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

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases mean, collectively, the not more than \$600,000 in aggregate principal amount of Series 1991A Bonds and the not more than \$100,000 in aggregate principal amount of Series 1991B Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted and authorized by this Bond Legislation.

"Original Notes Purchaser" means, in the event Notes are issued, the original purchaser of such Notes, as shall be named in the Supplemental Resolution, and, in the event a note or notes evidencing a line of credit are issued, such bank or banks as shall be named in a resolution supplemental hereto.

"Other Grants" means, collectively, the Small Cities Block Grant from the Department of Housing and Urban Development, through the State of West Virginia, pursuant to the commitment therefor, together with any other grant other than the EPA Grant hereafter received by the Issuer to aid in financing any Costs.

"Outstanding," when used with reference to Bonds or Notes and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered or all Notes theretofore and thereupon being authenticated and delivered except (i) any Bond or Note cancelled by the Bond Registrar or Notes Registrar, at or

prior to said date; (ii) any Bond or Note, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder or under the Indenture, as applicable, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond or Note deemed to have been paid as provided in Article X hereof or as provided in the Indenture, as applicable; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or Noteholders, any Bonds or Notes registered to the Issuer.

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

"Paying Agent" means the bank or banks or other entity designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

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

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

"Project" means the acquisition and construction of certain additions, betterments and improvements for the existing sewerage system of the Issuer, consisting generally of approximately 7,775 linear feet of 16-inch force main, 70 linear feet of 30-inch steel casing pipe, renovations to an existing lift station, a new lift station, two diversion manholes and two mounted generators, together with all appurtenant facilities.

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

- (a) Government Obligations;

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

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

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

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

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

(g) Repurchase agreements or similar banking arrangements, fully secured by investments

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

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investment operated by such State Board of Investments; and

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

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

"Registrar" means, as appropriate, the Bond Registrar, or the Notes Registrar, or both.

"Regulations" means temporary and permanent regulations promulgated under the Code or any predecessor thereto.

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

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

"Sanitary Board" means the Sanitary Board of the Issuer.

"Series 1991A Bonds" or "Series A Bonds" means the not more than \$600,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1991A, of the Issuer.

"Series 1991A Bonds Reserve Account" means the Series 1991A Bonds Reserve Account established in the Series 1991A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1991A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1991A Bonds in the then current or any succeeding year.

"Series 1991A Bonds Sinking Fund" means the Series 1991A Bonds Sinking Fund established by Section 5.02 hereof.

"Series 1991B Bonds" or "Series B Bonds" means the not more than \$100,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1991B, of the Issuer.

"Series 1991B Bonds Reserve Account" means the Series 1991B Bonds Reserve Account established in the Series 1991B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1991B Bonds Reserve Requirement" means, as of the date of calculation, the maximum amount of principal which will become due on the Series 1991B Bonds in the then current or any succeeding year.

"Series 1991B Bonds Sinking Fund" means the Series 1991B Bonds Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of any or all of the Notes or the sale of the Original Bonds, as the case may be; provided, that any matter intended by this Ordinance to be included in the

Supplemental Resolution with respect to the Notes or the Original Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

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

"System" means the complete properties of the Issuer for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further improvements, additions, betterments and extensions thereto hereafter constructed or acquired from any sources whatsoever.

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

"Trustee" means the banking institution designated as trustee for the Noteholders under the Indenture, if any, its successors and assigns.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION  
OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$1,258,166, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Notes and the Bonds hereby authorized shall be applied as provided in the Indenture, if any, and Article VI hereof, respectively.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1991A Bonds, funding a reserve account for each series of Original Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Original Bonds and related costs, or any one or more of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than \$700,000. Said Bonds shall be issued in two series, to be designated, respectively, "Sewer Revenue Bonds, Series 1991A," in the aggregate principal amount of not more than \$600,000, and "Sewer Revenue Bonds, Series 1991B," in the aggregate principal amount of not more than \$100,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Grant Anticipation Notes, if any. The proceeds of the Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall bear interest at such rate or rates, not exceeding the then legal maximum, payable semiannually on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Bonds of each series shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series in aggregate principal amount

equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk-Treasurer. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.09 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of

negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

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

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost.  
In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing

a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

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

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payment of the debt service of all the Series 1991A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, senior and prior to the lien on Net Revenues in favor of the Holders of the Series 1991B Bonds. The payment of the debt service of all the Series 1991B Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1991A Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds and the Reserve Accounts therein are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Original Bonds. The text of the Original Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby or by any Supplemental Resolution or supplemental ordinance adopted or enacted prior to the issuance thereof:

[Form of Series 1991A Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF KENOVA  
SEWER REVENUE BOND,  
SERIES 1991A

No. AR-\_\_\_\_\_

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

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

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning \_\_\_\_\_ 1, 19\_\_\_\_\_. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated \_\_\_\_\_, 19\_\_\_\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project"); (ii) [to pay interest on the Bonds of this Series (the "Bonds") during the construction of the Project and for not more than 6 months thereafter; (iii) to fund a reserve account for the Bonds; (iv)] to pay certain costs of issuance hereof and related costs. The existing sewerage system of the Issuer, the Project, and any further additions, betterments and improvements thereto is herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 19\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 19\_\_\_\_ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS SENIOR AND PRIOR WITH RESPECT TO LIEN, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE SEWER REVENUE BONDS, SERIES 1991B, OF THE ISSUER ISSUED CONCURRENTLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$\_\_\_\_\_ AND DESCRIBED IN THE BOND LEGISLATION (THE "SERIES 1991B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1991A Bonds Reserve Account"), unexpended proceeds of the Bonds and the Series 1991B Bonds and any other sources provided in the Bond Legislation. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1991A Bonds Reserve Account, unexpended proceeds of the Bonds and the Series 1991B Bonds and any other sources provided in the Bond Legislation. Pursuant to the Bond Legislation, the Issuer has

covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, the Series 1991B Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds or the Series 1991B Bonds, provided however, that so long as there exists in the Series 1991A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for the Series 1991B Bonds and any other obligations outstanding prior to or on a parity with the Bonds or the Series 1991B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have

happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, THE CITY OF KENOVA has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk-Treasurer, and has caused this Bond to be dated \_\_\_\_\_, 19\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk-Treasurer

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1991A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

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

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

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

[Form of Series 1991B Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF KENOVA  
SEWER REVENUE BOND,  
SERIES 1991B

No. BR-\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF KENOVA, a municipal corporation and political subdivision of the State of West Virginia in Wayne County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), in annual installments on \_\_\_\_\_ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Supplemental Loan Agreement between the Issuer and the Authority, dated \_\_\_\_\_, 19\_\_\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project"); (ii) [to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii)] to pay certain costs of issuance hereof and related costs. The existing sewerage system of the Issuer, the Project, and any further additions, betterments and improvements thereto is herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16,

Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 19\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 19\_\_\_\_ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS JUNIOR AND SUBORDINATE WITH RESPECT TO LIEN, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE SEWER REVENUE BONDS, SERIES 1991A, OF THE ISSUER ISSUED CONCURRENTLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$\_\_\_\_\_ AND DESCRIBED IN THE BOND LEGISLATION (THE "SERIES 1991A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System after there has first been paid from said Net Revenues all payments then due and owing on account of the Series 1991A Bonds, all moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1991B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the moneys in the Series 1991B Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, the Series 1991A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1991A Bonds or the Bonds, provided, however, that so long as there exists in the Series 1991B Bonds Reserve Account and the reserve account established for the Series 1991A Bonds, respectively, amounts at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds and

the Series 1991A Bonds in the then current or any succeeding year, and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owners of the Bonds, which lien is subordinate to the lien in favor of the registered owners of the Series 1991A Bonds.

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

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part

of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF KENOVA has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk-Treasurer, and has caused this Bond to be dated \_\_\_\_\_, 19\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk-Treasurer

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1991B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

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

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

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

Section 3.10. Sale of Original Bonds; Approval and Ratification of Execution of Loan Agreement with Authority. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk-Treasurer is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.11. "Amended Schedule A" Filing; Tender of Series 1991B Bonds. Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor. In the event such schedule reflects an excess of funding for the Project, or if the Authority is otherwise advised of an excess, the Authority may tender the Series 1991B Bonds to the Issuer for payment in an amount equal to such excess to the extent such excess is lawfully available therefor. Notwithstanding the foregoing, if the Issuer has Notes outstanding upon completion of acquisition and construction of the Project, it will advise the Authority of such fact and submit a second schedule to the Authority upon payment of such Notes, and the Authority will not tender its Series 1991B Bonds for payment until the outstanding Notes have been paid.

## ARTICLE IV

### INTERIM CONSTRUCTION FINANCING

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts or issuance of the Bonds, the Issuer may issue and sell its Notes in an aggregate principal amount not to exceed \$500,000. The Notes may be in the form of bond anticipation notes, grant anticipation notes and/or as evidence of a line of credit from a commercial bank or other lender, or any combination of the foregoing, at the discretion of the Issuer, and as shall be set forth in one or more resolutions supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture and/or supplemental resolution, as applicable.

Section 4.02. Terms of and Security for Notes; Trust Indenture. The Notes, if issued, shall be issued in fully registered form, in the denominations, with such terms and secured in the manner set forth in the Indenture, if applicable (which Indenture in the form to be executed and delivered by the Issuer shall be approved by a supplemental resolution), or one or more supplemental resolutions, if no Indenture is used.

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Bonds or the Net Revenues (if issued in the form of Bond Anticipation Notes) or the Grant Receipts, the Surplus Revenues and the letter of credit proceeds (if issued in the form of Grant Anticipation Notes) and from other sources described in the Indenture and/or supplemental resolution or resolutions. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Indenture and/or the Supplemental Resolution.

Section 4.04. Letters of Credit. As additional security for any Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree

to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed \$500,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter or letters of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Bond Construction Trust Fund.

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

- (1) Series 1991A Bonds Sinking Fund;
  - (a) Within the Series 1991A Bonds Sinking Fund, the Series 1991A Bonds Reserve Account.
- (2) Series 1991B Bonds Sinking Fund;
  - (a) Within the Series 1991B Bonds Sinking Fund, the Series 1991B Bonds Reserve Account.

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

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, (i) on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1991A Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1991A Bonds Sinking Fund, a sum equal

to 1/6th of the amount of interest which will become due on said Series 1991A Bonds on the next ensuing semiannual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1991A Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1991A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1991A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1991A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1991A Bonds Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Series 1991A Bonds, if not fully funded upon issuance of the Series 1991A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1991A Bonds Reserve Account, an amount equal to 1/120 of the Series 1991A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1991A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1991A Bonds Reserve Requirement.

(4) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements,

emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the reserve accounts established with respect to the Series 1991A Bonds or the Series 1991B Bonds [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(5) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1991B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1991B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1991B Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1991B Bonds Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(6) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Series 1991B Bonds, if not fully funded upon issuance of the Series 1991B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1991B Bonds Reserve Account, an amount equal to 1/120 of the Series 1991B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1991B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1991B Bonds Reserve Requirement.

Moneys in the Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective series of Bonds as the same shall become due. Moneys in the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the respective series of Bonds, as the same shall come due,

when other moneys in the attendant Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the several Sinking Funds and Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 1991A Bonds Reserve Account which result in a reduction in the balance of the Series 1991A Bonds Reserve Account to below the Series 1991A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full to the Series 1991A Bonds Sinking Fund for payment of debt service on the Series 1991A Bonds.

Any withdrawals from the Series 1991B Bonds Reserve Account which result in a reduction in the balance of the Series 1991B Bonds Reserve Account to below the Series 1991B Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Series 1991A Bonds Sinking Fund, the Series 1991A Bonds Reserve Account, the Renewal and Replacement Fund and the Series 1991B Bonds Sinking Fund have been made in full.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate Reserve Account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 1991A Bonds Sinking Fund or the Series 1991B Bonds Sinking Fund or into the Reserve Accounts therein when the aggregate amount of funds in said

respective Sinking Funds and Reserve Accounts are at least equal to the aggregate principal amount of the respective Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the respective maturities thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

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

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System, including, but not limited to, payment to the Trustee for deposit in the Notes Debt Service Fund.

C. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such

additional sums as shall be necessary to pay the Depository Bank's charges and the Paying Agent and the Commission's fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

H. All Tap Fees shall be deposited by the Issuer, as received, in the Bond Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System, provided that, in the event Notes are issued, Tap Fees may, with the written consent of the Authority be deposited otherwise.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

A. From the proceeds of the Series 1991A Bonds, there shall first be deposited with the Commission in the Series 1991A Bonds Sinking Fund, the amount, if any, specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1991A Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1991A Bonds, there shall be deposited with the Commission in the Series 1991A Bonds Reserve Account, and from the proceeds of the Series 1991B Bonds, there shall be deposited with the Commission in the Series 1991B Reserve Account, the respective sums, if any, set forth in the Supplemental Resolution for funding of the Reserve Accounts.

C. Next, from the proceeds of the Series 1991A Bonds, there shall first be credited to the Bond Construction Trust Fund and then paid, any and all borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, including interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer.

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

E. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 1991A Bonds, and thereafter, for the Series 1991B Bonds. In the event that Notes are issued, the disposition of funds in the Bond

Construction Trust Fund may be modified from that set forth herein, with the written consent of the Authority.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund (except for the costs of issuance of the Original Bonds which shall be made upon request of the Issuer) shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, and all Costs have been paid, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1991A Bonds Reserve Account and when fully

funded to the Series 1991B Bonds Reserve Account, and when both Reserve Accounts are fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund; provided that, in no event shall more than 10% of the proceeds of either or both the Series 1991A Bonds or Series 1991B Bonds be deposited in the Reserve Accounts and any balance in excess of said amounts shall be returned to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply any such moneys in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds and thereafter to the next ensuing principal payments due thereon. Notwithstanding the foregoing, if the Authority tenders any of its Series 1991B Bonds to the Issuer pursuant to the provisions of the Supplemental Loan Agreement, such moneys shall be applied to the purchase of such Series 1991B Bonds.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

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

Until the payment in full of the principal of and interest on the Notes when due, and to the extent they do not materially adversely affect Bondholders, the covenants, agreements and provisions contained in this Bond Legislation shall, where applicable, also inure to the benefit of the Holders of the Notes and the Trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the Trustee or any Holder or Holders of said Notes as prescribed in the Indenture; provided, that Section 7.09 shall not be applied to the Grant Anticipation Notes.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds or Notes shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payment of the debt service of the Series 1991A Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, senior and prior to the lien on said Net Revenues in favor of the Holders of the Series 1991B Bonds. The payment of the debt service of the Series 1991B Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on said Net Revenues, junior and subordinate to the lien on said Net Revenues in favor of the Holders of the Series 1991A Bonds. The Revenues derived from the System, in an amount sufficient to pay the principal of and

interest on the Bonds and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted May 7, 1991, which rates are incorporated herein by reference as a part hereof.

Section 7.05. Sale of the System. Except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds and the Notes, if any, Outstanding, or to effectively defease this Bond Legislation in accordance with Sections 10.01 and 10.02 hereof and, if entered into and not previously defeased, the Indenture in accordance with Section 8.01 thereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System. With respect to the Notes, such proceeds in an amount sufficient to pay the Notes in full shall be applied to the payment of the Notes, either at maturity or, if allowable under the Supplemental Resolution or Indenture, prior thereto.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The

proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in Section 7.07B, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally to the Notes issued under the Indenture or supplemental resolution prior to or on a parity with the lien on behalf of such Notes until such Notes have been defeased in accordance with the provisions of the Indenture and the Bond Legislation; and, so long as any of the Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Series 1991B Bonds only may be issued as provided for in Section 7.07 hereof. All obligations issued by the

Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1991A Bonds and the Series 1991B Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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

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

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1991B Bonds. No Parity Bonds shall be issued which shall be payable out of the revenues of the System on a parity with the Series 1991A Bonds, unless the Series 1991B Bonds are no longer outstanding.

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

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

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

- (1) Any obligations with a lien on the Net Revenues prior to that of the Bonds;
- (2) The Bonds then Outstanding;
- (3) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the City Clerk-Treasurer prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or

times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 1991A Bonds and the Series 1991B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 1991A Bonds or the Series 1991B Bonds.

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

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

Section 7.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds or of a Note or Notes issued pursuant to this Bond Legislation or the Trustee shall have the right at all reasonable times to inspect the System and all

parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Trustee and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds or Notes, as the case may be, requesting the same, an annual report containing the following:

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the Indenture with respect to said Bonds or Notes, as the case may be, and the status of all said funds and accounts.

(C) The amount of any Bonds, Notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds or Notes, as the case may be, and shall submit said report to the Trustee and the Authority, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all

in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk-Treasurer, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Reserve Accounts and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

Section 7.10. Operating Budget and Audit. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased

expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Trustee and the Authority and to any Holder of any Bonds or Notes, as the case may be, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Trustee and to any Holder of any Bonds or Notes, as the case may be, or anyone acting for and in behalf of such Holder of any Bonds or Notes, as the case may be.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 7.11. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off

the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds or the Notes remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or, with the consent of the Authority, for the other purposes provided herein for said Renewal and

Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

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

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

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

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.15. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.16. Completion of Project. The Issuer will complete the Project and operate and maintain the System in good condition.

Section 7.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Original Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Original Bonds during the term thereof is, under the terms of the Original Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and

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

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Original Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

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

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

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Original Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

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

Except as provided in the Indenture, if any, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Trustee, if any, and the Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the

Code and assure the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Original Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Original Bonds) so that the interest on the Original Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

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

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or

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

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Original Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

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

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Notes set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the Notes, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Note; or

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

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

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

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

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Note or Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Notes or the Bonds, as the case may be, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Notes or the Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Notes or the Bonds, or the rights of such Registered Owners, provided however, that no remedy herein stated may be exercised by a Noteholder in a manner which adversely affects any remedy available to the Bondholders, and provided further, that all rights and remedies of the Holders of the Series 1991B Bonds shall be subject to those of the Holders of the Series 1991A Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond or a Bond Anticipation Note may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds or Bond Anticipation Notes any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

and powers of the Issuer with respect to said facilities as the Issuer itself might do.

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

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

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

## ARTICLE X

### DEFEASANCE

Section 10.01. Defeasance of Series 1991A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1991A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1991A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1991A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

Series 1991A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1991A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1991A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1991A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1991A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior

to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Series 1991B Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1991B Bonds, the principal due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1991B Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1991B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

Series 1991B Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date the principal installments of such Series 1991B Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1991B Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of said Series 1991B Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of said Series 1991B Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such

reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.03. Defeasance of Notes. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of any series of Notes, the principal of and interest due or to become due thereon, at the times and in the manner set forth in the Indenture, then with respect to such Notes only, this Bond Legislation, the Indenture, if any, and the pledges of Grant Receipts and other moneys and securities pledged thereby, and all covenants, agreements and other obligations of the Issuer to the Holders of the Notes shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Notes from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Notes or the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Notes, the Series 1991A Bonds or the Series 1991B Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or any Note or Notes or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes, respectively, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder or Noteholder as may be necessary to assure the exclusion of interest on the Original Bonds and the Notes from gross income of the holders thereof.

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

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

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

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions or parts thereof in conflict with

the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Clerk-Treasurer and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon and approval by the Mayor.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Herald-Dispatch, a newspaper of general circulation in the County of Wayne, no newspaper being published in the City of Kenova, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds and the Notes, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Bond Legislation and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading - May 16, 1991  
Passed on Second Reading - May 23, 1991  
Passed on Final Reading  
Following Public  
Hearing - June 6, 1991  
Effective - June 13, 1991

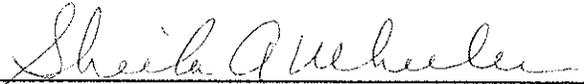
  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
City Clerk-Treasurer

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF KENOVA on the 6th day of June, 1991, and effective June 13, 1991.

Dated: August 9, 1991

[SEAL]

  
Sheila A. Wheeler  
City Clerk-Treasurer

08/06/91  
KENS.B.A3  
47214/91002



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1991A AND SERIES 1991B OF THE CITY OF KENOVA; AUTHORIZING AND APPROVING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO THE SERIES 1991A BONDS AND SERIES 1991 B BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS

WHEREAS, the city council (the "Governing Body") of The City of Kenova (the "Issuer"), has duly and officially enacted a bond and notes ordinance on June 6, 1991, effective June 13, 1991 (the "Bond and Notes Ordinance" or "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF KENOVA AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1991A, NOT MORE THAN \$100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1991B, AND NOT MORE THAN \$500,000 INTERIM CONSTRUCTION FINANCING, CONSISTING OF BOND ANTICIPATION NOTES, GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND AUTHORIZING OR RATIFYING AND CONFIRMING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT

2

RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds of the Issuer (the "Bonds"), in an aggregate principal amount not to exceed \$700,000, to be issued in two series, the Series 1991A Bonds to be in an aggregate principal amount of not more than \$600,000 (the "Series 1991A Bonds"), and the Series 1991B Bonds to be in an aggregate principal amount of not more than \$100,000 (the "Series 1991B Bonds"), and has preliminarily authorized the execution and delivery of a loan agreement relating to the Series 1991A Bonds to be dated the date of delivery of the Bonds, and a supplemental loan agreement relating to the Series 1991B Bonds, also to be dated the date of delivery of the Bonds (sometimes collectively referred to herein as the "Loan Agreement"), by and between the Issuer and West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 16, Article 13 of the West Virginia Code, 1931, as amended (the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amounts, maturity dates, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

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

WHEREAS, the Series 1991A Bonds and the Series 1991B Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF KENOVA:

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

(A) The Sewer Revenue Bonds, Series 1991A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$508,101. The Series 1991A Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2029, shall bear interest at the rate of 8.10% per annum, payable semiannually on October 1 and April 1 of each year, first interest payable October 1, 1991, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1991A Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Loan Agreement and incorporated therein by reference.

(B) The Sewer Revenue Bonds, Series 1991B, of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$22,941. The Series 1991B Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2029, shall be interest free, shall be subject to redemption upon the written consent of the Authority, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1991B Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Supplemental Loan Agreement and incorporated therein by reference.

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

Section 3. The Issuer does hereby authorize, approve and accept the Loan Agreement, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, directed and approved.

The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 4. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Series 1991A Bonds and Series 1991B Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and One Valley Bank, National Association, in substantially the form attached hereto, and the execution and delivery by the Mayor of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Series 1991A Bonds and Series 1991B Bonds.

Section 6. The Issuer does hereby appoint First Bank of Ceredo, Ceredo, West Virginia, as Depository Bank under the Bond Ordinance.

Section 7. Series 1991A Bonds proceeds in the amount of \$41,155 shall be deposited in the Series 1991A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 1991A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 1991A Bonds Reserve Account and Series 1991B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 1991B Bonds Reserve Account.

Section 9. The balance of the proceeds of the Bonds shall be deposited in or credited to the Bond Construction Trust Fund for payment of Costs of the Project, including, without limitation, costs of issuance of the Bonds and repayment of borrowings previously incurred for the Project, if any.

Section 10. The Issuer hereby determines to pay, or reimburse itself for the cost of payment, on the date of delivery of the Bonds and receipt of proceeds thereof, all borrowings of the Issuer heretofore incurred for the purpose of temporarily financing a portion of the Costs of the Project, if any, including, but not limited to, all borrowings from the Authority.

Section 11. The Mayor and City Clerk-Treasurer are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end

that the Series 1991A Bonds and the Series 1991B Bonds may be delivered on or about August 9, 1991, to the Authority pursuant to the Loan Agreement.

Section 12. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank in repurchase agreements with maturities not exceeding 30 days secured by a pledge of Governmental Obligations, and, therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements until further directed in writing by the Issuer. Moneys in the Sinking Funds for the Series 1991A Bonds and Series 1991B Bonds shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated or to be promulgated thereunder.

Section 15. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1991, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not

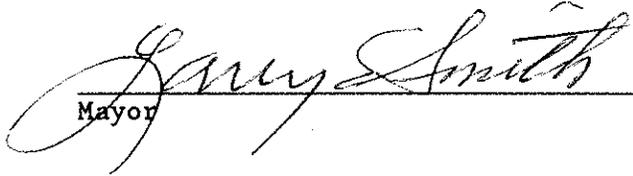
issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof and upon approval by the Mayor.

Adopted this 2nd day of August, 1991.

Approved by Mayor - August 2, 1991.

THE CITY OF KENOVA

  
\_\_\_\_\_  
Mayor

08/02/91  
KENSBL2  
47214/91002

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Council of THE CITY OF KENOVA and effective on the 2nd day of August, 1991.

Dated: August 9, 1991

[SEAL]

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City Clerk-Treasurer

LOAN AGREEMENT

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

CITY OF KENOVA  
(Governmental Agency)

W I T N E S S E T H:

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

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

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

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

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

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

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

## ARTICLE I

### Definitions

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

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

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

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

1.5 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with a portion of the proceeds of its water development revenue bonds, all in accordance with the provisions of this Loan Agreement.

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

1.7 "Origination Fee" means the fee paid by a Governmental Agency with respect to its participation in the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987, to provide funds for the acquisition and construction of wastewater Projects.

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

1.9 "Project" means the water development project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Governmental Agency in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "System" means the water development project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority having found, to the extent applicable, that the Project is consistent with the applicable comprehensive plan of water management approved by the Director of the West Virginia Division of Natural Resources (or in the process of preparation by such Director), has been approved by the West Virginia Bureau of Public Health and is consistent with the standards set by the West Virginia Water Resources Board for the waters of the State affected thereby.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is

doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

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

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

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

2.6 The Governmental Agency agrees that it will permit the Authority and its agents to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof.

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

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

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

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

### ARTICLE III

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

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

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

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

(c) The Governmental Agency shall either have received bids or entered contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority shall have received a certificate of the Consulting Engineers to such effect the form of which certificate is attached hereto as Exhibit A;

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

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

(f) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

(h) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountants for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

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

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

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

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

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

moneys and close Local Bond sales in such order and manner as it deems in the best interest of the Program.

#### ARTICLE IV

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

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

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

(b) Covenants substantially as follows:

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

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account established for the payment of debt service on the Local Bonds (the "Reserve Account") is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement") and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvi) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at

such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

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

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project;

(xix) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider; and

(xx) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Code) from time to time as the Authority may request.

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and

subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority.

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

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

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

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

4.7 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as determined by the Authority and shall include without limitation Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for the water development revenue bonds. The Authority shall provide both the Governmental Agency and the trustee for the water development revenue bonds with a schedule of such fees and charges, and the Governmental Agency shall pay such fees and charges on the dates indicated directly to the trustee. The Governmental Agency hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

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

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

#### ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan

next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 6a of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

## ARTICLE VI

### Other Agreements of the Governmental Agency

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

6.2 At the option of the Authority, the Governmental Agency shall issue and sell to the Authority additional, subordinate bonds to evidence the Governmental Agency's obligation to repay to the Authority any grant received by the Governmental Agency from the Authority in excess of the amount to which the Governmental Agency is entitled pursuant to applicable policies or rules and regulations of the Authority. Also at the option of the Authority, the Governmental Agency may issue and sell to the Authority additional, subordinate bonds for such purposes as may be acceptable to the Authority.

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

in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of this Loan Agreement.

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

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

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

6.7 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

City of Kenova  
[Proper Name of Governmental Agency]

(SEAL)

By: *Garry Smith*  
Its: Mayor

Attest:

Date: August 9, 1991

*Sheila A. Wheeler*  
Its Recorder Clerk

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

(SEAL)

By: *Daniel B. Yonkosky*  
Director

Attest:

Date: August 9, 1991

*Barbara B. Meadows*  
Secretary-Treasurer

WDA-5X  
(July 1990)

SCHEDULE X  
DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds    \$ 508,101.00  
Purchase Price of Local Bonds        \$ 508,101.00

Interest on the Local Bonds is payable on April 1 and October 1 in each year, beginning with the first semiannual interest payment date after delivery of the Local Bonds to the Authority, until the Local Bonds are paid in full, at the rate of 8.10 % per annum. Principal of the Local Bonds is payable on October 1 in each year as set forth on Exhibit 1 attached hereto and incorporated herein by reference.

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

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



West Virginia Water Development Authority  
 Local Loan from Series 1990 A  
 City of Kenova

DEBT SERVICE REPORT

DATE	PRINCIPAL	COUPON	INTEREST	ACCRETION	TOTAL
10/01/91			5,944.78		5,944.78
10/01/92	2,250.00	8.100	41,156.18	0.00	43,406.18
10/01/93	2,432.00	8.100	40,973.93	0.00	43,405.93
10/01/94	2,629.00	8.100	40,776.94	0.00	43,405.94
10/01/95	2,842.00	8.100	40,563.99	0.00	43,405.99
10/01/96	3,072.00	8.100	40,333.79	0.00	43,405.79
10/01/97	3,321.00	8.100	40,084.96	0.00	43,405.96
10/01/98	3,590.00	8.100	39,815.96	0.00	43,405.96
10/01/99	3,881.00	8.100	39,525.17	0.00	43,406.17
10/01/00	4,195.00	8.100	39,210.80	0.00	43,405.80
10/01/01	4,535.00	8.100	38,871.01	0.00	43,406.01
10/01/02	4,903.00	8.100	38,503.67	0.00	43,406.67
10/01/03	5,300.00	8.100	38,106.53	0.00	43,406.53
10/01/04	5,729.00	8.100	37,677.23	0.00	43,406.23
10/01/05	6,193.00	8.100	37,213.18	0.00	43,406.18
10/01/06	6,695.00	8.100	36,711.55	0.00	43,406.55
10/01/07	7,237.00	8.100	36,169.25	0.00	43,406.25
10/01/08	7,823.00	8.100	35,583.06	0.00	43,406.06
10/01/09	8,457.00	8.100	34,949.39	0.00	43,406.39
10/01/10	9,142.00	8.100	34,264.38	0.00	43,406.38
10/01/11	9,882.00	8.100	33,523.88	0.00	43,405.88
10/01/12	10,683.00	8.100	32,723.43	0.00	43,406.43
10/01/13	11,548.00	8.100	31,858.11	0.00	43,406.11
10/01/14	12,484.00	8.100	30,922.72	0.00	43,406.72
10/01/15	13,495.00	8.100	29,911.52	0.00	43,406.52
10/01/16	14,588.00	8.100	28,818.42	0.00	43,406.42
10/01/17	15,769.00	8.100	27,636.80	0.00	43,405.80
10/01/18	17,047.00	8.100	26,359.51	0.00	43,406.51
10/01/19	18,428.00	8.100	24,978.70	0.00	43,406.70
10/01/20	19,920.00	8.100	23,486.03	0.00	43,406.03
10/01/21	21,534.00	8.100	21,872.51	0.00	43,406.51
10/01/22	23,278.00	8.100	20,128.26	0.00	43,406.26
10/01/23	25,164.00	8.100	18,242.74	0.00	43,406.74
10/01/24	27,202.00	8.100	16,204.46	0.00	43,406.46
10/01/25	29,405.00	8.100	14,001.09	0.00	43,406.09
10/01/26	31,787.00	8.100	11,619.29	0.00	43,406.29
10/01/27	34,362.00	8.100	9,044.54	0.00	43,406.54
10/01/28	37,145.00	8.100	6,261.22	0.00	43,406.22
10/01/29	40,154.00	8.100	3,252.47	0.00	43,406.47
	508,101.00		1,147,281.44	0.00	1,655,382.44



SCHEDULE Y  
REVENUES

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

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by an outstanding local resolution, indenture or other act or document, as reflected on Schedule X to the Loan Agreement, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds from revenues and thirteen (13) months prior to the first date of payment of principal of the Local Bonds, respectively, to provide debt service on the Local Bonds by depositing in a sinking fund one-sixth (1/6) of the interest payment next coming due on the Local Bonds and one-twelfth (1/12) of the principal payment next coming due on the Local Bonds and, beginning thirteen (13) months prior to the first date of payment of principal of the Local Bonds, if the Reserve Account was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit) in an amount equal to the Reserve Requirement, by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account over not more than ten (10) years) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;
- (iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account;
- (iv) to provide debt service on and requisite reserves for any subordinate indebtedness of the Governmental Agency held or owned by the Authority; and

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

SCHEDULE Z

Additional and Supplemental Definitions

1. "EPA" means the United States Environmental Protection Agency and any successors to the functions thereof.

2. "Local Statute" means Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended.

3. "System" means a sewage collection system and/or treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations and all appurtenances necessary or useful and convenient for the collection and/or a treatment, purification and disposal, in a sanitary manner, of liquid and solid waste, sewage, night soil and industrial wastes, in its entirety or any integral part thereof, owned by the Governmental Agency and under the supervision and control of a sanitary board, and any extensions, improvements or betterments thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

Additional Conditions and Covenants

1. The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with, among other State and federal standards, the water quality standards established by the West Virginia Division of Natural Resources and EPA.

2. The Governmental Agency agrees that it will permit the EPA to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof.

3. As a condition precedent to the Authority's making the Loan, the Governmental Agency shall have obtained, among other permits required, permits from the EPA and the West Virginia Division of Natural Resources and approval of the "Part B" supplement to its EPA grant agreement.

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

That the Governmental Agency will, to the full extent permitted by applicable law and the rules and regulations of the PSC, discontinue and shut off the services and facilities of the System and, in the event the Governmental Agency owns a water facility (the "Water System"), the Water System to all users of services of the System delinquent in payment of charges for the services of the System and will not restore the services of either system until all delinquent charges for the services of the System have been fully paid.

5. To the extent required by law, the Governmental Agency hereby covenants and agrees to secure approval of the Authority and all other State agencies having jurisdiction before applying for federal financial assistance for pollution abatement in order to maximize the amounts of such federal financial assistance received or to be received for all water development projects in the State.

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

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

- (a) The Governmental Agency expects to enter into a contract within six months of the date thereof for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2-1/2 percent of the estimated total Project cost financed with proceeds from the sale of the Local Bonds or \$100,000;
- (b) Work with respect to the construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within three years from the date of issuance of the Authority's water development revenue bonds;
- (c) All of the proceeds from the sale of the Local Bonds which will be used for payment of costs of the Project will be expended for

such purpose within three years from the date of issuance of the Authority's water development revenue bonds; and

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



SUPPLEMENTAL LOAN AGREEMENT

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

CITY OF KENOVA  
(Governmental Agency)

W I T N E S S E T H:

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

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

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

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

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

WHEREAS, on or prior to the date hereof, the Governmental Agency and the Authority entered a loan agreement with respect to the purchase by the Authority of certain Local Bonds of the Governmental Agency, all as more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Loan Agreement").

WHEREAS, having reviewed the Application and made all findings required by Section 5 of the Act, and having available sufficient funds therefore, the Authority is willing to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of supplemental, subordinate revenue bonds of the Governmental Agency with certain available funds of the Authority (other than the proceeds of certain water development revenue bonds of the State issued by the Authority pursuant to and in accordance with the provisions of the Act and a general resolution adopted by the Authority on May 22, 1985, as supplemented), subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Authority's supplemental water development loan program (the "Supplemental Program") as hereinafter set forth.

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

## ARTICLE I

### Definitions; Loan Agreement

1.1 Capitalized terms used and not otherwise defined herein shall have the meanings respectively given them by the Loan Agreement.

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

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

1.4 "Origination Fee" means the fee paid by a Governmental Agency with respect to its participation in the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987, to provide funds for the acquisition and construction of wastewater Projects.

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

1.6 "Supplemental Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, to evidence the Supplemental Loan and to be purchased by the Authority with certain available funds (other than the proceeds of its water development revenue bonds), the lien of which on the revenues of the System is junior, subordinate and inferior to that of the Local Bonds, all in accordance with the provisions of this Supplemental Loan Agreement.

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

1.8 This Supplemental Loan Agreement is supplemental to the Loan Agreement, the terms of which are incorporated herein by reference.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority having found, to the extent applicable, that the Project is consistent with the applicable comprehensive plan of water management approved by the Director of the West Virginia Division of Natural Resources (or in the process of preparation by such Director), has been approved by the West Virginia Bureau of Public Health and is consistent with the standards set by the West Virginia Water Resources Board for the waters of the State affected thereby.

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

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

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

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

2.6 The Governmental Agency agrees that it will permit the Authority and its agents to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof.

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

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear.

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

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Supplemental Loan Agreement.

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

### ARTICLE III

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

3.1 The agreement of the Authority to make the Supplemental Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority, of each and

all of those certain conditions precedent on or before the delivery date for the Supplemental Bonds, which shall be the date established pursuant to Section 3.4 of the Loan Agreement for delivery of the Local Bonds. Said conditions precedent are as follows:

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

(b) The Governmental Agency shall have authorized the issuance of and delivered to the Authority for purchase the Supplemental Bonds described in this Article III and in Article IV hereof and shall have delivered to the Authority for purchase the Local Bonds in accordance with the Loan Agreement;

(c) The Governmental Agency shall have received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application, and the Authority shall have received a certificate of the Consulting Engineers to such effect;

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the issuance of the Supplemental Bonds, construction of the Project and imposition of rates and charges and shall have taken any other action required for the imposition of such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel, to such effect;

(f) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountants for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

(g) The net proceeds of the Supplemental Bonds, together with the net proceeds of the Local Bonds and all other 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) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate, of such person or firm and in form and substance satisfactory to the Authority, to such effect and evidence satisfactory to it of such irrevocably committed grants.

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

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

3.4 The Supplemental Loan will be made only in conjunction with the Loan. The Supplemental Bond shall be delivered to the Authority, at the offices of the Authority, simultaneously with the delivery of the Local Bond to the Authority.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Authority for loans to finance water development projects and that the obligation of the Authority to make any such loan is subject to the Governmental Agency's fulfilling all of the terms and conditions of this Supplemental Loan Agreement and the Loan Agreement on or prior to the Date of Loan Closing and to the right of the Authority to make such loans to other governmental agencies under the conditions and in the manner described in the Loan Agreement. The Governmental Agency further understands and acknowledges that the Authority's obligation to make the Supplemental Loan is subject to the availability on the Date of Loan Closing of funds legally available therefor.

ARTICLE IV

Supplemental Bonds; Security for Supplemental Loan;  
Repayment of Supplemental Loan; No Interest on  
Supplemental Loan; Fees and Charges

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

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

(b) Covenants substantially as follows:

(i) That the Supplemental Bonds shall be secured by the revenues from the System, as more fully set forth in Schedules X and Y attached hereto, subject to the prior and senior security therefrom granted to the Local Bonds;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and the Supplemental Bonds and all other obligations secured by or payable from the revenues of the System prior to or on a parity with the Local Bonds and on a parity with the Supplemental Bonds or, if the reserve accounts established for the payment of debt service on the Local Bonds (the "Reserve Account") and for the payment of debt service on the Supplemental Bonds (the "Supplemental Reserve Account") are funded (whether by Local Bond proceeds with respect to the Local Bonds, monthly deposits or otherwise), respectively, at an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in any year (the "Reserve Requirement") or on the Supplemental Bonds in any year (the "Supplemental Reserve Requirement"), as the case may be, and any reserve account for any such

prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and the Supplemental Bonds and any such prior or parity obligations;

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

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

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

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System;

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

(viii) That any bond owner may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including

the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal or interest on the Supplemental Bonds, the right to obtain the appointment of a receiver to administer the System as provided by law, subject to the prior and senior rights of the owner or owners of the Local Bonds;

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

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

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

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

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

(xiv) That the proceeds of the Supplemental Bonds, except for accrued interest and capitalized interest, if any, must be deposited in a construction fund on which the owner of the Supplemental Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs),

provided that said construction fund may be the one established for the Local Bonds, which shall have a prior and senior lien thereon;

(xv) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer, in the form attached to the Loan Application, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Water Development Project;

(xvi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider; and

(xvii) That, as long as the Authority is the owner of any of the Supplemental Bonds, the Governmental Agency shall not authorize redemption of any Supplemental Bonds by it without the written consent of the Authority.

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

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

4.3 The principal of the Supplemental Loan shall be repaid by the Governmental Agency annually on the day and in the years provided in Schedule X hereto.

4.4 The Supplemental Loan shall not bear interest.

4.5 The Supplemental Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency.

4.6 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the reasonable administrative expenses of the Authority relating to the Supplemental Program, which administrative expenses shall be as determined by the Authority.

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

#### ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Supplemental Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Supplemental Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds and the Supplemental Bonds shall prove to be insufficient to produce the minimum sums set

forth in the Local Act, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Supplemental Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the rate of five percent (5%) per annum, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 6a of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

#### ARTICLE VI

##### Other Agreements of the Governmental Agency

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

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

right to cancel all or any of its obligations under this Supplemental Loan Agreement if (a) any representation made to the Authority by the Governmental Agency in connection with the Loan or the Supplemental Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Loan Agreement or this Supplemental Loan Agreement.

## ARTICLE VII

### Miscellaneous

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

7.2 Schedules X, Y and Z shall be attached to this Supplemental Loan Agreement at the time of execution hereof by the Authority and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

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

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

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

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

7.7 By execution and delivery of this Supplemental Loan Agreement, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Supplemental Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.8 This Supplemental Loan Agreement shall terminate upon the earlier of:

(i) termination by the Authority of the Loan Agreement pursuant to Subsections 7.8(i) or (ii) thereof;

(ii) termination by the Authority pursuant to Section 6.2 hereof; or

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

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Governmental Agency, but this Supplemental Loan Agreement shall not be binding on the Authority until executed by it.

City of Kenova

[Proper Name of Governmental Agency]

(SEAL)

By

Garry Smith  
Its Mayor

Attest:

Date:

August 9, 1991

Sheila Wheeler  
Its Recorder Clerk

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

(SEAL)

By Daniel B. Yorks  
Director

Attest:

Date: August 9, 1991

Barbara B Meadows  
Secretary-Treasurer

WDA-Supp. 5X  
(July 1990)

SCHEDULE X  
DESCRIPTION OF SUPPLEMENTAL BONDS

Principal Amount of Supplemental Bonds	\$ <u>22,941.00</u>
Purchase Price of Supplemental Bonds	\$ <u>22,941.00</u>

Principal of the Supplemental Bonds is payable on October 1 in each year as set forth on Exhibit 1 attached hereto and incorporated herein by reference. The Supplemental Bonds bear no interest.

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

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



West Virginia Water Development Authority  
Local Loan from Series 1990 A Pool  
Debt Service Schedule - City of Kenova

Closing 8/9/91

<u>Date</u>	<u>Interest Free Loan</u>
10/1/91	
10/1/92	603.71
10/1/93	603.71
10/1/94	603.71
10/1/95	603.71
10/1/96	603.71
10/1/97	603.71
10/1/98	603.71
10/1/99	603.71
10/1/00	603.71
10/1/01	603.71
10/1/02	603.71
10/1/03	603.71
10/1/04	603.71
10/1/05	603.71
10/1/06	603.71
10/1/07	603.71
10/1/08	603.71
10/1/09	603.71
10/1/10	603.71
10/1/11	603.71
10/1/12	603.71
10/1/13	603.71
10/1/14	603.71
10/1/15	603.71
10/1/16	603.71
10/1/17	603.71
10/1/18	603.71
10/1/19	603.71
10/1/20	603.71
10/1/21	603.71
10/1/22	603.71
10/1/23	603.71
10/1/24	603.71
10/1/25	603.71
10/1/26	603.71
10/1/27	603.71
10/1/28	603.71
10/1/29	603.73
	<u>\$22,941.00</u>



SCHEDULE Y  
REVENUES

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

(i) as prescribed by the Loan Agreement, to pay Operating Expenses of the System;

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

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

(iv) beginning thirteen (13) months prior to the first date of payment of principal of the Supplemental Bonds, to provide debt service on the Supplemental Bonds by depositing in a sinking fund one-twelfth (1/12) of the principal payment next coming due on the Supplemental Bonds and, if the Supplemental Reserve Account was not funded concurrently with the issuance thereof in an amount equal to the Supplemental Reserve Requirement, by depositing in the Supplemental Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account over not more than ten (10) years) of the Supplemental Reserve Requirement or, if the Supplemental Reserve Account has been so funded (whether by Supplemental Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Supplemental Reserve Account at the Supplemental Reserve Requirement;

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

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

SCHEDULE Z

Additional and Supplemental Definitions

1. "EPA" means the United States Environmental Protection Agency and any successors to the functions thereof.

2. "Local Statute" means Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended.

3. "System" means a sewage collection system and/or a treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations and all appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of liquid and solid waste, sewage, night soil and industrial wastes, in its entirety or any integral part thereof, owned by the Governmental Agency and under the supervision and control of a sanitary board, and any extensions, improvements or betterments thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

Additional Conditions and Covenants

1. The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with, among other State and federal standards, the water quality standards established by the West Virginia Division of Natural Resources and EPA.

2. The Governmental Agency agrees that it will permit the EPA to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof.

3. As a condition precedent to the Authority's making the Supplemental Loan, the Governmental Agency shall have obtained, among other permits required, permits from the EPA and the West Virginia Division of Natural Resources and approval of the "Part B" supplement to its EPA grant agreement.

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

That the Governmental Agency will, to the full extent permitted by applicable law and the rules and regulations of the PSC, discontinue and shut off the services and facilities of the System and, in the event the Governmental Agency owns a water facility (the "Water System"), the Water System to all users of services of the System delinquent in payment of charges for the services of the System and will not restore the services of either system until all delinquent charges for the services of the System have been fully paid.

5. To the extent required by law, the Governmental Agency hereby covenants and agrees to secure approval of the Authority and all other State agencies having jurisdiction before applying for federal financial assistance for pollution abatement in order to maximize the amounts of such federal financial assistance received or to be received for all water development projects in the State.

6. Subject to any prior or parity obligations described in Schedules X and Y attached to the Supplemental Loan Agreement, and to the prior lien of the Local Bonds, the net revenues derived from the operation of the System are pledged to the payment of the principal of the Supplemental Bonds.

Public Service Commission  
Of West Virginia

211 Brooks Street, P. O. Box 512  
Charleston, West Virginia 25322



Phone: (304) 346-1311  
FAX: (304) 346-1325

July 23, 1991

JUL 24 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Donald Ray Jarrell, Esq.  
P. O. Box 190  
Wayne, WV 25570

Shirley A. Skaggs, Esq.  
Assistant Attorney General  
Environment & Energy Division  
Department of Natural Resources  
State Capitol Complex  
Charleston, WV 25305

Re: CASE NO. 91-002-S-CN  
CITY OF KENOVA

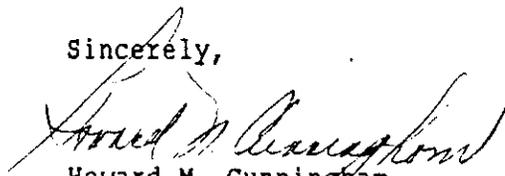
Ms. Skaggs and Mr. Jarrell:

Enclosed are two (2) copies of the recommended order in the above styled case, pursuant to the requirements of West Virginia Code §24-1-9.

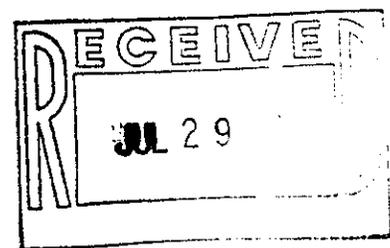
Please note carefully that if no exceptions are filed within the time period specified, this order will become the order of the Commission five (5) days following said time period, unless the order is stayed or postponed by the Commission.

If you have any questions concerning this or related matters, please feel free to contact the Administrative Law Judge. Exceptions to this order should be filed with this office.

Sincerely,

  
Howard M. Cunningham  
Executive Secretary

HMC/ft  
Encl

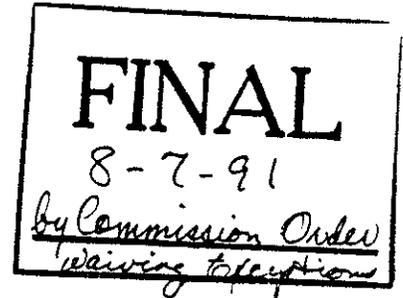


5A



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON

Entered: July 23, 1991



CASE NO. 91-002-S-CN

CITY OF KENOVA, a municipal corporation, Wayne County. Application for a certificate of convenience and necessity to construct a wastewater transportation system at Kenova, Wayne County.

RECOMMENDED DECISION

PROCEDURE

On January 2, 1991, the City of Kenova, a municipal corporation, Wayne County, filed an application, duly verified, for a certificate of convenience and necessity to construct 7,535 linear feet of 16-inch DIP force main; to renovate an existing lift station; and to construct a new lift station, two diversion manholes, two permanent mounted generators, and other incidental items for a complete system at Kenova, Wayne County.

The City estimated project costs of \$1,512,691, to be financed as follows: Small Cities Block Grant in the amount of \$323,000; U.S. Environmental Protection Agency funds in the amount of \$489,691; and Water Development Authority funds in an amount not to exceed \$700,000. The financing was later revised.

The City proposed a minimum monthly bill for sewer service of \$1.90 per 1,000 gallons, with an average bill for 5,000 gallons of \$9.50 per month.

On January 28, 1991, a Commission Referral Order assigned this case to the Division of Administrative Law Judges with a directive that a decision be rendered in the matter on or before July 31, 1991.

A hearing was held on May 29, 1991, at 9:30 a.m., in the Commission's Hearing Room, 201 Brooks Street, Charleston, West Virginia. Appearing at the hearing were Don Jarrell, Esq., for the Applicant; Shirley S. Skaggs, Esq., Assistant Attorney General, for the Department of Natural Resources; and Thomas Sayre, Esq., for Commission Staff. On June 18, 1991, a second hearing was held, pursuant to proper notice of

the application and hearing being given by publication. (Affidavit of Publication dated June 7, 1991). The same counsel appeared at the second hearing. No written protests were received by the Commission to the publication notice of the application and hearing and no protestants appeared at either hearing. Due to mechanical failure, the second hearing was incapable of being transcribed.

#### EVIDENCE

The evidence at the first hearing was as follows:

Sterling E. Bare, a Commission Utilities Analyst, was called as the City's witness. Mr. Bare testified that Commission Staff's only concern was that the City's rates be adequate since South Kenova Public Service District will not be a customer of the utility for some period of time and the City's Rule 42 Exhibit had not deleted the South Kenova revenues from its computations. (Tr., pp. 9-10).

Terry Smith, with Kelly, Gidley, Blair and Wolfe, Consulting Engineers, testified as to the gallons of sewage per day. (Tr., pp. 14-19, 31). Larkin C. Calhoun, with Calhoun Associates, testified that he had prepared the Rule 42 Exhibit using engineering estimates. Based upon Commission Staff's problems voiced in a prehearing meeting about the South Kenova revenues being included in the Rule 42 computations, the City revised its Rule 42 Exhibit. (Tr., p. 34). He testified that, based upon the recomputation after deleting the revenues from South Kenova, the City's rates are adequate. (Tr., p. 36). An amended Rule 42 Exhibit would be filed by the City. (Tr., p. 36).

Larry R. Angel, project coordinator for the City and Ceredo, testified on behalf of the City. (Tr., p. 39). He stated that one of the concerns of Staff at the Ceredo hearing was the funding of \$204,716. (Tr., p. 39). The City has acquired a letter of credit to cover the possible funding shortfall from the First Bank of Ceredo. (Tr., p. 39). He indicated that the project had WDA and other financing approvals and is ready to proceed, subject to receiving the Public Service Commission's approval. (Tr., p. 43).

Walter Lawrence Williams, Esq., a partner with the law firm of Steptoe and Johnson, testified as bond counsel for the sewer financing. (Tr., p. 57). He stated that there have been two readings of the bond ordinance. A public hearing and a final reading was scheduled for June 6. (Tr., p. 59). He stated as part of the loan transcript, he will obtain verification from both the engineers and the public accountants that the rates are adequate. (Tr., p. 61).

Edward A. Burdette, professional engineer for the Department of Natural Resources, testified. He said that the present project is to pump the City's sewage along with Ceredo sewage through a meter station into the City of Huntington, which would provide adequate treatment. (Tr., p. 67). He indicated there has been a lawsuit between the Division of Natural Resources and the City for violation of the City's National Pollution Discharge Permit standards. (Tr., p. 68). He indicated that a

Consent Decree has been entered into with the City which contained a compliance schedule, a finance schedule and other documents. (Tr., p. 69). The City is required to construct the proposed project as one way to meet that compliance schedule. He stated that any project approved by DNR would have to be the most cost-effective alternative. (Tr., p. 72). He testified that, if the project does not go ahead now, the cost will increase. (Tr., p. 76).

Doug Olds, administrative assistant, Water Development Authority (WDA), testified that the WDA had received an application for the project and that the WDA has funds available. (Tr., p. 94).

On July 12, 1991, Commission Staff filed a Final Staff Memorandum recommending approval of the project and indicating that the project will adequately serve the Kenova customers. The Memorandum stated that the rate ordinance was passed by the City and the rate appeal period has lapsed. It further stated that, since the certificate was not protested and since the City has adequate rates to fund and operate the proposed system, Staff accepts the City engineer's estimate as to projected flows and accordingly recommended approval of the application.

Counsel was notified by telephone of the inability to transcribe the second hearing. By an Internal Memorandum filed on July 18, 1991, Staff indicated that it did not desire a further hearing and recommended that the case be decided on the evidence submitted. On July 18, 1991, George B. Morone, III, Esq., by letter, requested to be substituted as Counsel for Don Jarrell and the City agreed that the matter could be decided on the evidence submitted and waived any right to a further hearing. By letter dated July 19, 1991, Mrs. Skaggs indicated that, based upon Staff's recommendation of approval of the project, DNR did not believe a further hearing was necessary.

#### DISCUSSION

With the Staff's recommendation of approval of the project and the fact that no protests have been received to the project, the Administrative Law Judge finds that the project is needed; that the project will provide adequate service; the project is economically feasible and adequately financed; and that the rates have been passed by ordinance which is now final, and are adequate to support the project.

#### FINDINGS OF FACT

1. On January 2, 1991, the City of Kenova, a municipal corporation, Wayne County, filed an application, duly verified, for a certificate of convenience and necessity to construct 7,525 linear feet of 16-inch DIP force main; to renovate an existing lift station; and to construct a new lift station, two diversion manholes, two permanent mounted generators and other incidental items for a complete system at Kenova, Wayne County. (Application).

2. The City estimated that construction would cost a total of \$1,258,166 to be financed by a Small Cities Block Grant in an amount not to exceed \$323,000; U.S. Environmental Protection Agency funds in an

amount not to exceed \$404,124; and Water Development Authority funds in an amount not to exceed \$531,042. (Application).

3. The City has passed an ordinance reflecting a minimum monthly bill of \$1.90 for 1,000 gallons with an average bill for 5,000 gallons being \$9.50 per month. (Application).

4. A Water Pollution Control Permit was issued on June 10, 1991, for the project. (Permit No. WV0035912).

5. Proper notice of the application and hearing was made in conformity with West Virginia Code §24-2-11 and no protest was received to the application. (Affidavit of Publication and Commission file).

6. The rates and charges were passed by an ordinance of the City and are final. (Ordinance).

7. Commission Staff recommended approval of the proposed project. (Staff Final Memorandum dated July 11, 1991).

#### CONCLUSIONS OF LAW

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

2. The proposed project will provide adequate service.

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

4. The rates and charges were passed by ordinance and are final.

5. There was no protest to the application.

#### ORDER

IT IS, THEREFORE, ORDERED that the application of the City of Kenova, a municipal corporation, Wayne County, filed on January 2, 1991, for a certificate of convenience and necessity to construct 7,525 linear feet of 16-inch DIP force main; to renovate an existing lift station; and to construct a new lift station, two diversion manholes, two permanent mounted generators and other incidental items for a complete system at Kenova, Wayne County, be, and hereby is, approved.

IT IS FURTHER ORDERED that the financing for the project previously discussed be, and hereby is, approved.

IT IS FURTHER ORDERED that, if there is a change in any of the terms, conditions or scope of the project or financing, the City of Kenova shall notify the Commission immediately and shall file for Commission approval of the revised project or financing.

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

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

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

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Ann Rodak  
Administrative Law Judge

AR:cjf



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 2nd day of August, 1991.

CASE NO. 91-002-S-CN

CITY OF KENOVA, a municipal corporation,  
Wayne County.

Application for a certificate of convenience  
and necessity to construct a wastewater  
transportation system at Kenova, Wayne  
County.

COMMISSION ORDER

On January 2, 1991, the City of Kenova, a municipal corporation, Wayne County, filed an application, duly verified, for a certificate of convenience and necessity to construct 7,535 linear feet of 16-inch DIP force main; to renovate an existing lift station; and to construct a new lift station, two diversion manholes, two permanent mounted generators, and other incidental items for a complete system at Kenova, Wayne County.

On January 28, 1991, a Commission Referral Order assigned this case to the Division of Administrative Law Judges with a directive that a decision be rendered in the matter on or before July 31, 1991.

A hearing was held on May 29, 1991 in Charleston, West Virginia. Appearing at the hearing were Donald Jarrell, Esq., for the City of Kenova; Shirley S. Skaggs, Esq., Assistant Attorney General, for the Department of Natural Resources; and Thomas Sayre, Esq., for Commission Staff. On June 18, 1991, a second hearing was held, pursuant to proper notice of the application and hearing being given by publication. The same counsel appeared at the second hearing. No written protests were received by the Commission to the publication notice of the application and hearing and no protestants appeared at either hearing. On July 23, 1991, the Administrative Law Judge issued a recommended decision granting the requested certificate.

On July 31, 1991, the Commission received a written communication from George B. Morrone, III, Esq., City Attorney, City of Kenova, requesting a waiver of the right to take exceptions to the aforesaid order and requesting the aforesaid recommended decision to be the final order of the Commission as soon as possible. On July 31, 1991, the Commission received a written communication from Drexel M. Vealey, Esq., counsel for Commission Staff, indicating that Commission Staff has no objection to waiving the 15-day exception period to the recommended decision. The Commission also understands that the Department of Natural Resources has no objection to the requested waiver.



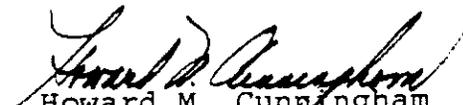
W.Va. Code §24-1-9 provides for a time period of at least twenty (20) days from the date of a recommended order until it becomes effective. According to §24-1-9(c), at least fifteen (15) days must be afforded the parties within which to file exceptions. In addition, §24-1-9(e) provides that when no exceptions are filed within the specified time period, the Commission shall have an additional five (5) days within which to stay or postpone the order.

The Commission is therefore of the opinion and belief that said request of waiver received July 31, 1991, should be granted.

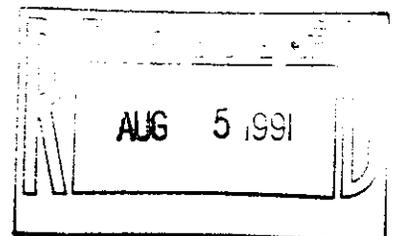
IT IS, THEREFORE, ORDERED that the requested waiver be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the Administrative Law Judge's Recommended Decision in this matter become final five (5) days after the date of this order.

A True Copy, Teste:

  
Howard M. Cunningham  
Executive Secretary

HMC/s





Public Service Commission  
Of West Virginia

Richard E. Hitt  
General Counsel



Phone: (304) 340-0317  
FAX (304) 340-0325

August 5, 1991

Walter L. Williams, Esquire  
Steptoe & Johnson  
Attorneys at Law  
P. O. Box 2190  
Clarksburg, WV 26302-2190

Re: Case No. 91-002-S-CN  
City of Kenova

Dear Mr. Williams:

The Staff of the Public Service Commission has reviewed the Recommended Decision as entered on July 23, 1991 and the Commission Order as entered on August 2, 1991, and takes no exception to these decisions. The Staff has determined that no exceptions will be filed to those Orders, and no appeals will be taken.

Since no other parties appeared in protest or as intervenors to the proceeding, unless the City of Kenova or the Department of Natural Resources intends to file an appeal of those Orders, no appeals will be taken by Commission Staff.

This will confirm our conversation regarding the sewage treatment agreement between the City of Kenova and the City of Huntington. Staff recommends that the agreement be accepted for filing purposes without approving the terms and conditions thereof, and that the contract be formally filed under Rule 39.

Sincerely,

A handwritten signature in cursive script, appearing to read "Drexel M. Vealey".

Drexel M. Vealey  
Staff Attorney

DMV/cbd





STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

MARIO J. PALUMBO  
ATTORNEY GENERAL

(304) 348-9160  
TELEFAX (304) 348-2768

CONSUMER HOTLINE  
(800) 368-8808

August 7, 1991

Mr. Walter L. Williams, Esq.  
Steptoe & Johnson  
P. O. Box 2190  
Clarksburg, West Virginia 26302-2190

Re: City of Kenova  
P.S.C. Case No. 91-002-S-CN

Dear Mr. Williams,

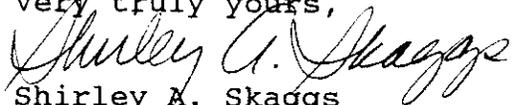
The West Virginia Division of Natural Resources has reviewed the Recommended Decisions as entered on the 23rd the day of July and the 2nd of August, 1990, by Ann Rodak, Administrative Law Judge, and takes no exception to those Decisions. The WV DNR has determined that no exceptions will be filed to those Decisions, and no appeals will be taken.

As was presented at the hearings on the above styled matter, the WV DNR has a statutory mandate to administer the regulations of the Environmental Protection Agency with regard to the Federal Clean Water Act. It is delineated in those regulations that only the least costly alternative be selected for funding sewage treatment projects. The combined sewage collection project between Kenova and Ceredo, with treatment to be provided by the City of Huntington, has been determined the least costly alternative for treatment in this geographical area. Therefore, the WV DNR is in support of the recommended Decision to approve the combined project.



Mr. Williams  
August 7, 1991  
Page 2

Very truly yours,



Shirley A. Skaggs  
Assistant Attorney General  
Environment & Energy Division

cc: Ann Spaner  
Eli McCoy  
Mike Johnson  
Fred Hypes  
Robert Coontz





STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

MARIO J. PALUMBO  
ATTORNEY GENERAL

(304) 348-9160  
TELEFAX (304) 348-2768

CONSUMER HOTLINE  
(800) 368-8808

August 12, 1991

Mr. Walter Williams, Esq.  
Steptoe and Johnson  
P.O. Box 2190  
Clarksburg, WV 26302-2190

Re: City of Kenova  
P.S.C. Case No. 91-002-S-CN

Dear Mr. Williams,

This letter is written to clarify the allusion in my letter dated August 7, 1991, to the Recommended Decisions entered by Ann Rodak, hearing examiner of the Public Service Commission of West Virginia, in the above referenced matter. Those dates of decision should read, July 23rd and August 2, 1991.

Thank you for your help in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Shirley A. Skaggs".

Shirley A. Skaggs  
Assistant Attorney General  
Environment & Energy Division



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned, BARBARA B. MEADOWS, Secretary-Treasurer of West Virginia Water Development Authority, for and on behalf of West Virginia Water Development Authority (the "Authority"), and LARRY E. SMITH, Mayor of The City of Kenova (the "Issuer"), hereby certify as follows:

1. On the 9th day of August, 1991, the Authority received the entire original issue of \$531,042 in aggregate principal amount of Sewer Revenue Bonds, Series 1991A and Series 1991B, of the Issuer (collectively, the "Bonds"), issued as a single, fully registered Bond of each Series, numbered AR-1 and BR-1, respectively, both dated August 9, 1991, the Series 1991A Bond being in the principal amount of \$508,101 and the Series 1991B Bond being in the principal amount of \$22,941.

2. At the time of such receipt of the Series 1991A Bonds and the Series 1991B Bonds upon original issuance, all of the Series 1991A Bonds and the Series 1991B Bonds had been executed by Larry E. Smith, as Mayor of the Issuer, by his manual signature, and by Sheila A. Wheeler, as City Clerk-Treasurer of the Issuer, by her manual signature, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 1991A Bonds and the Series 1991B Bonds, of the proceeds of the Series 1991A Bonds in the aggregate principal amount of \$508,101 and proceeds of the Series 1991B Bonds in the aggregate principal amount of \$22,941 (100% of par value), there being no interest accrued on either series.

6

IN WITNESS WHEREOF, Barbara B. Meadows duly signed and delivered this receipt on behalf of WEST VIRGINIA WATER DEVELOPMENT AUTHORITY and THE CITY OF KENOVA has caused this receipt to be duly executed and delivered by its Mayor, as of this 9th day of August, 1991.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By Barbara B Meadows  
Secretary-Treasurer

THE CITY OF KENOVA

By Gary Smith  
Mayor

08/05/91  
KENSJ.M2  
47214/91002



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

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

Ladies and Gentlemen:

There are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of The City of Kenova Sewer Revenue Bonds, Series 1991A, in the principal amount of \$508,101, and Bond No. BR-1, constituting the entire original issue of The City of Kenova Sewer Revenue Bonds, Series 1991B, in the principal amount of \$22,941, both dated August 9, 1991 (collectively, the "Bonds"), executed by the Mayor and City Clerk-Treasurer of The City of Kenova (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond and Notes Ordinance and Supplemental Resolution duly enacted and adopted by the Issuer (collectively, the "Local Act");

(2) A copy of the Local Act authorizing the above Bond issue, duly certified by the City Clerk-Treasurer of the Issuer;

(3) Executed counterparts of the loan agreement and the supplemental loan agreement, both dated August 9, 1991, by and between the West Virginia Water Development Authority (the "Authority") and the Issuer (collectively, the "Loan Agreement"); and

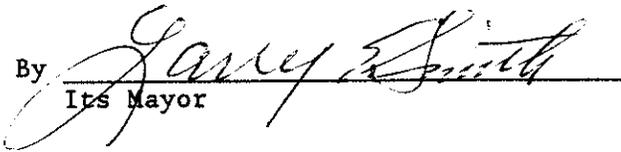
(4) Signed opinions of nationally recognized bond counsel regarding the validity of the Loan Agreement and Bonds.

You are hereby requested and authorized to deliver the Series 1991A Bonds and Series 1991B Bonds to the Authority upon payment to the account of the Issuer of the sum of \$531,042, representing the agreed aggregate purchase price of the Series 1991A

Bonds and Series 1991B Bonds, there being no accrued interest thereon. Prior to such delivery of the Series 1991A Bonds and Series 1991B Bonds, you will please cause the Series 1991A Bonds and Series 1991B Bonds to be authenticated by an authorized officer, as Bond Registrar for the Series 1991A Bonds and Series 1991B Bonds, in accordance with the forms of Certificate of Authentication and Registration thereon.

Dated this 9th day of August, 1991.

THE CITY OF KENOVA

By   
Its Mayor

08/05/91  
KENSJ.N2  
47214/91002



SPECIMEN BOND

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF KENOVA  
SEWER REVENUE BOND,  
SERIES 1991A

No. AR-1

\$508,101

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF KENOVA, a municipal corporation and political subdivision of the State of West Virginia in Wayne County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of FIVE HUNDRED EIGHT THOUSAND ONE HUNDRED ONE DOLLARS (\$508,101) in installments on October 1 of each year, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning October 1, 1991. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated August 9, 1991.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and

improvements for the existing sewerage facilities of the Issuer (the "Project"); (ii) to pay interest on the Bonds of this Series (the "Bonds") during the construction of the Project and for not more than 6 months thereafter; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the Issuer, the Project, and any further additions, betterments and improvements thereto is herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Council of the Issuer on June 6, 1991, and effective June 13, 1991, and a Supplemental Resolution duly adopted by the Issuer on August 2, 1991 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS SENIOR AND PRIOR WITH RESPECT TO LIEN, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE SEWER REVENUE BONDS, SERIES 1991B, OF THE ISSUER ISSUED CONCURRENTLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$22,941 AND DESCRIBED IN THE BOND LEGISLATION (THE "SERIES 1991B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1991A Bonds Reserve Account"), unexpended proceeds of the Bonds and the Series 1991B Bonds and any other sources provided in the Bond Legislation. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1991A Bonds Reserve Account, unexpended proceeds of the Bonds and the Series 1991B Bonds and any other sources provided in the Bond Legislation. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation,

repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, the Series 1991B Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds or the Series 1991B Bonds, provided however, that so long as there exists in the Series 1991A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for the Series 1991B Bonds and any other obligations outstanding prior to or on a parity with the Bonds or the Series 1991B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that

a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, THE CITY OF KENOVA has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk-Treasurer, and has caused this Bond to be dated August 9, 1991.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk-Treasurer

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1991A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

"Schedule of Annual Debt Service"  
West Virginia Water Development Authority  
Local Loan from Series 1990 A  
City of Kanova

## DEBT SERVICE REPORT

DATE	PRINCIPAL	COUPON	INTEREST	ACCRETION	TOTAL
10/01/91			5,944.78		5,944.78
10/01/92	2,250.00	8.100	41,156.18	0.00	43,406.18
10/01/93	2,432.00	8.100	40,973.93	0.00	43,405.93
10/01/94	2,629.00	8.100	40,776.94	0.00	43,405.94
10/01/95	2,842.00	8.100	40,563.99	0.00	43,405.99
10/01/96	3,072.00	8.100	40,333.79	0.00	43,405.79
10/01/97	3,321.00	8.100	40,084.96	0.00	43,405.96
10/01/98	3,590.00	8.100	39,815.96	0.00	43,405.96
10/01/99	3,881.00	8.100	39,525.17	0.00	43,406.17
10/01/00	4,195.00	8.100	39,210.80	0.00	43,405.80
10/01/01	4,535.00	8.100	38,871.01	0.00	43,406.01
10/01/02	4,903.00	8.100	38,503.67	0.00	43,406.67
10/01/03	5,300.00	8.100	38,106.53	0.00	43,406.53
10/01/04	5,729.00	8.100	37,677.23	0.00	43,406.23
10/01/05	6,193.00	8.100	37,213.18	0.00	43,406.18
10/01/06	6,695.00	8.100	36,711.55	0.00	43,406.55
10/01/07	7,237.00	8.100	36,169.25	0.00	43,406.25
10/01/08	7,823.00	8.100	35,583.06	0.00	43,406.06
10/01/09	8,457.00	8.100	34,949.39	0.00	43,406.39
10/01/10	9,142.00	8.100	34,264.38	0.00	43,406.38
10/01/11	9,882.00	8.100	33,523.88	0.00	43,405.88
10/01/12	10,683.00	8.100	32,723.43	0.00	43,406.43
10/01/13	11,548.00	8.100	31,858.11	0.00	43,406.11
10/01/14	12,484.00	8.100	30,922.72	0.00	43,406.72
10/01/15	13,495.00	8.100	29,911.52	0.00	43,406.52
10/01/16	14,588.00	8.100	28,818.42	0.00	43,406.42
10/01/17	15,769.00	8.100	27,636.80	0.00	43,405.80
10/01/18	17,047.00	8.100	26,359.51	0.00	43,406.51
10/01/19	18,428.00	8.100	24,978.70	0.00	43,406.70
10/01/20	19,920.00	8.100	23,486.03	0.00	43,406.03
10/01/21	21,534.00	8.100	21,872.51	0.00	43,406.51
10/01/22	23,278.00	8.100	20,128.26	0.00	43,406.26
10/01/23	25,164.00	8.100	18,242.74	0.00	43,406.74
10/01/24	27,202.00	8.100	16,204.46	0.00	43,406.46
10/01/25	29,405.00	8.100	14,001.09	0.00	43,406.09
10/01/26	31,787.00	8.100	11,619.29	0.00	43,406.29
10/01/27	34,362.00	8.100	9,044.54	0.00	43,406.54
10/01/28	37,145.00	8.100	6,261.22	0.00	43,406.22
10/01/29	40,154.00	8.100	3,252.47	0.00	43,406.47
	508,101.00		1,147,281.44	0.00	1,655,382.44

ASSIGNMENT

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

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

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_



SPECIMEN BOND

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF KENOVA  
SEWER REVENUE BOND,  
SERIES 1991B

No. BR-1

\$22,941

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF KENOVA, a municipal corporation and political subdivision of the State of West Virginia in Wayne County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of TWENTY-TWO THOUSAND NINE HUNDRED FORTY-ONE DOLLARS (\$22,941), in annual installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Supplemental Loan Agreement between the Issuer and the Authority, dated August 9, 1991.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the Issuer, the Project, and any further additions, betterments and improvements thereto is herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Council of the Issuer on June 6, 1991, and effective June 13, 1991, and a Supplemental Resolution duly adopted by the Issuer on August 2, 1991 (collectively called the "Bond

Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS JUNIOR AND SUBORDINATE WITH RESPECT TO LIEN, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE SEWER REVENUE BONDS, SERIES 1991A, OF THE ISSUER ISSUED CONCURRENTLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$508,101 AND DESCRIBED IN THE BOND LEGISLATION (THE "SERIES 1991A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System after there has first been paid from said Net Revenues all payments then due and owing on account of the Series 1991A Bonds, all moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1991B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the moneys in the Series 1991B Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, the Series 1991A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1991A Bonds or the Bonds, provided, however, that so long as there exists in the Series 1991B Bonds Reserve Account and the reserve account established for the Series 1991A Bonds, respectively, amounts at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds and the Series 1991A Bonds in the then current or any succeeding year, and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further

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

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owners of the Bonds, which lien is subordinate to the lien in favor of the registered owners of the Series 1991A Bonds.

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

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

IN WITNESS WHEREOF, THE CITY OF KENOVA has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk-Treasurer, and has caused this Bond to be dated August 9, 1991.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk-Treasurer

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1991B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

Exhibit A  
 "Schedule of Annual Debt Service"  
 West Virginia Water Development Authority  
 Local Loan from Series 1990 A Pool  
 Debt Service Schedule - City of Kenova  
 Closing 8/9/91

<u>Date</u>	<u>Interest Free Loan</u>
10/1/91	
10/1/92	603.71
10/1/93	603.71
10/1/94	603.71
10/1/95	603.71
10/1/96	603.71
10/1/97	603.71
10/1/98	603.71
10/1/99	603.71
10/1/00	603.71
10/1/01	603.71
10/1/02	603.71
10/1/03	603.71
10/1/04	603.71
10/1/05	603.71
10/1/06	603.71
10/1/07	603.71
10/1/08	603.71
10/1/09	603.71
10/1/10	603.71
10/1/11	603.71
10/1/12	603.71
10/1/13	603.71
10/1/14	603.71
10/1/15	603.71
10/1/16	603.71
10/1/17	603.71
10/1/18	603.71
10/1/19	603.71
10/1/20	603.71
10/1/21	603.71
10/1/22	603.71
10/1/23	603.71
10/1/24	603.71
10/1/25	603.71
10/1/26	603.71
10/1/27	603.71
10/1/28	603.71
10/1/29	603.73
	<u>\$22,941.00</u>

ASSIGNMENT

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

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

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:  
  
\_\_\_\_\_

1

2

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

UNION NATIONAL CENTER EAST

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

FACSIMILE (304) 624-8183

(304) 624-8000

WRITER'S DIRECT DIAL NUMBER

August 9, 1991

The City of Kenova  
Sewer Revenue Bonds, Series 1991A

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

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by The City of Kenova (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$508,101 Sewer Revenue Bonds, Series 1991A, dated the date hereof (the "Local Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated August 9, 1991, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Issuer and the West Virginia Water Development Authority (the "Authority") and the Local Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are originally issued in the form of one bond, registered as to principal and interest to the Authority, with interest payable October 1 and April 1 of each year, commencing October 1, 1991, at the rate of 8.10% per annum, and with principal installments payable on October 1 in each of the years 1992 through 2029, inclusive, all as set forth in "Schedule X," attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Local Statute"), for the purposes of (i) financing a portion of the costs of acquisition and construction of additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project"); (ii) paying interest on the Local Bonds during the construction of the Project and for not more than 12 months thereafter; and (iii) paying certain issuance and other costs in connection therewith.

10

715 CHARLESTON NATIONAL PLAZA  
P. O. BOX 1588  
CHARLESTON, W. VA. 25326-1588  
(304) 353-8000  
FACSIMILE (304) 353-8180

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

126 EAST BURKE STREET  
MARTINSBURG, W. VA. 25401-4300  
(304) 263-6991  
FACSIMILE (304) 263-4785

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

THE BRYAN CENTRE  
82 WEST WASHINGTON STREET, SUITE 401  
HAGERSTOWN, MARYLAND 21740-4804  
(301) 791-6620  
FACSIMILE (301) 739-3948

We have also examined the applicable provisions of the Local Statute, the Bond and Notes Ordinance duly enacted by the Council of the Issuer on June 6, 1991, and effective June 13, 1991, as supplemented by a Supplemental Resolution adopted August 2, 1991 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

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

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

5. The interest on the Local Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years beginning after December 31, 1989). The opinions set forth in the preceding sentence are subject to the condition

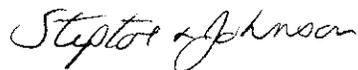
that the Issuer comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Local Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

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

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

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

Very truly yours,



STEPTOE & JOHNSON

08/07/91  
KENSJ.03  
47214/91002



# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

UNION NATIONAL CENTER EAST

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

FACSIMILE (304) 624-8183

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WRITER'S DIRECT DIAL NUMBER

August 9, 1991

## The City of Kenova Sewer Revenue Bonds, Series 1991B

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

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by The City of Kenova (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia of its \$22,941 Sewer Revenue Bonds, Series 1991B, dated the date hereof (the "Supplemental Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a supplemental loan agreement, dated August 9, 1991, including all schedules and exhibits attached thereto (the "Supplemental Loan Agreement"), between the Issuer and the West Virginia Water Development Authority (the "Authority") and the Supplemental Bonds, which are to be purchased by the Authority in accordance with the provisions of the Supplemental Loan Agreement. The Supplemental Bonds are originally issued in the form of one bond registered as to principal to the Authority, without interest thereon, with principal payable in installments on October 1 in each of the years 1992 through 2029, inclusive, all as set forth in "Schedule X," attached to the Supplemental Loan Agreement and incorporated in and made a part of the Supplemental Bonds.

The Supplemental Loan Agreement is supplemental to a loan agreement also dated August 9, 1991, between the Issuer and the Authority (the "Loan Agreement"). The Supplemental Bonds are junior, subordinate and inferior as to liens, pledges and sources of and security for payment to the "Sewer Revenue Bonds, Series 1991A" (the "Local Bonds"), issued simultaneously herewith in the aggregate principal amount of \$508,101.

The Supplemental Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia,

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(304) 353-8000  
FACSIMILE (304) 353-8180

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

126 EAST BURKE STREET  
MARTINSBURG, W. VA. 25401-4399  
(304) 263-6991  
FACSIMILE (304) 263-4785

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

THE BRYAN CENTRE  
82 WEST WASHINGTON STREET, SUITE 401  
HAGERSTOWN, MARYLAND 21740-4804  
(301) 791-6620  
FACSIMILE (301) 739-3948

including particularly, Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Local Statute"), for the purposes of (i) financing a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project"); and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of the Local Statute, the Bond and Notes Ordinance duly enacted by the Council of the Issuer on June 6, 1991, and effective June 13, 1991, as supplemented by a Supplemental Resolution adopted August 2, 1991 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Supplemental Bonds are authorized and issued, and the Supplemental Loan Agreement that has been undertaken. The Supplemental Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Supplemental Loan Agreement.

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

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

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

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

4. The Supplemental Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Local Act and secured by a lien on and pledge of the Net Revenues of said System, junior and subordinate only to the Local Bonds, all in accordance with the terms of the Supplemental Bonds and the Local Act.

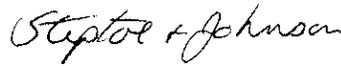
5. The Issuer has reserved the right to issue additional bonds ranking on a parity with the Supplemental Bonds, as provided in the Local Act.

6. The Supplemental Bonds are, under the Local Statute, exempt from direct taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

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

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

Very truly yours,



STEPTOE & JOHNSON

08/07/91  
KENSJ.P3  
47214/91002



# STEPTOE & JOHNSON

ATTORNEYS AT LAW

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WRITER'S DIRECT DIAL NUMBER

August 9, 1991

## The City of Kenova Sewer Revenue Bonds, Series 1991A

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

Ladies and Gentlemen:

We have examined a transcript of proceedings relating to the issuance of \$508,101 aggregate principal amount of Sewer Revenue Bonds, Series 1991A (the "Local Bonds"), of The City of Kenova (the "Issuer"), and a Certificate as to Arbitrage executed by the Mayor of the Issuer on this date.

Based upon such Certificate as to Arbitrage, we are of the opinion that the facts, estimates and circumstances set forth in the Certificate as to Arbitrage are sufficient to satisfy the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), to support the conclusion that the Local Bonds are not "arbitrage bonds" as therein defined. While we have undertaken no independent verification or investigation of the certifications, statements, expectations or representations set forth in such Certificate as to Arbitrage, no matters have come to our attention which make unreasonable or incorrect such certifications, statements, expectations or representations.

Accordingly, it is our opinion that, under existing statutes, regulations, rulings and court decisions, the Local Bonds are not "arbitrage bonds" as so defined. Assuming the West Virginia Water Development Authority (the "Authority") exclusively lends bond proceeds in a manner that does not result in its bonds being private activity bonds, as defined in the Code, and the use of the proceeds by each borrower from the Authority would not result in those proceeds being private activity bonds (if viewed as a separate issue), and assuming compliance by the Issuer with such Certificate as to Arbitrage, it is our further opinion that, based upon such Certificate as to Arbitrage and under existing statutes, regulations, rulings and court decisions, the proceeds of the Local Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code.

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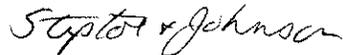
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FACSIMILE (301) 739-3948

The opinions set forth above are subject to the condition that the Issuer comply with all requirements of the Code relating to arbitrage that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements may cause the inclusion of interest on the Local Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Local Bonds.

Very truly yours,



STEPTOE & JOHNSON

08/07/91  
KENSJ.Q3  
47214/91002



**GEORGE B. MORRONE, III**

*Attorney At Law*

1409 Chestnut Street  
Kenova, West Virginia 25530-1235

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Telephone: (304) 453-3626  
Telecopier: (304) 453-6813

August 9, 1991

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

Steptoe & Johnson  
Post Office Box 2190  
Clarksburg, West Virginia 26301

RE: City of Kenova-Sewer Revenue Bonds  
Series 1991A and Series 1991B  
Our File No. 55504-001

Ladies and Gentlemen:

I am counsel to the City of Kenova, in Wayne County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinions of Steptoe & Johnson, as bond counsel, a loan agreement and supplemental loan agreement, both dated August 9, 1991, by and between the West Virginia Water Development Authority (the "Authority") and the Issuer (collectively, the "Loan Agreement"), the Local Act (as defined therein) and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). Terms used in said opinions, Local Act and Loan Agreement and not otherwise defined herein have the same meanings as therein when used herein.

I am of the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority,

constitutes a valid and binding agreement of the Issuer in accordance with its terms.

2. The Issuer and the Sanitary Board of the Issuer have been duly created and are validly existing, and the Mayor, City Clerk-Treasurer and members of the Council and the Sanitary Board of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer.
3. The Local Act has been duly adopted and enacted by the Issuer and is in full force and effect.
4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Loan Agreement, and the carrying out of the terms thereof, do not and will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.
5. The Issuer has received all permits, licenses, approvals and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, the receipt of all requisite orders and approvals from the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges. The time for appeal of such rate ordinance has expired prior to the date hereof with any appeal. The time for appeal of the Order of the Public Service Commission of West Virginia entered on July 23, 1991, in Case No. 91-002-S-CN, granting to the Issuer a Certificate of Public Convenience and Necessity with respect to the Project,

has not expired prior to the date hereof; however, such order is not subject to appeal by any customer, protestant, intervenor or other person not a party to the original application. The Issuer, the Department of Natural Resources and the Public Service Commission of West Virginia are the only parties to such Case No. 91-002-S-CN. The Public Service Commission staff and Assistant Attorney General on behalf of the Department of Natural Resources have stated in letters that no exceptions will be filed to the order, and no Appeals will be taken. The Issuer does not intend to file a petition for appeal or to otherwise challenge such order.

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

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

Very truly yours,



George B. Morrone, III

GBMIII/mkp

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THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

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

We, the undersigned MAYOR and CITY CLERK-TREASURER of The City of Kenova, in Wayne County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the \$531,042 aggregate principal amount of The City of Kenova Sewer Revenue Bonds, Series 1991A and Series 1991B (collectively, the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning as in the Bond and Notes Ordinance of the Issuer enacted by the Council of the Issuer June 6, 1991, and effective June 13, 1991, and a Supplemental Resolution adopted August 2, 1991 (collectively, the "Local Act").

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

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

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

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

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

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

Charter of The City of Kenova and Procedural Ordinances.

Certified Copies of Oaths of Office of Councilmembers.

Ordinance Creating Sanitary Board.

Petition of Sanitary Board.

Bond and Notes Ordinance.

Supplemental Resolution.

Rate Ordinance.

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

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

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

Minutes on Enactment of Rate Ordinance.

Loan Agreement.

EPA Grant Agreement, with Part B Amendment.

Evidence of SCBG Grant.

Public Service Commission Final Order entered July 23, 1991, and order entered August 2, 1991.

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

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Larry E. Smith	- Mayor	July 1, 1991	June 30, 1995
Paul E. Hutchison	- Councilmember	July 1, 1991	June 30, 1995
Jim Spry	- Councilmember	July 1, 1991	June 30, 1995
William R. Chaffin	- Councilmember	July 1, 1991	June 30, 1995
Ron Lester	- Councilmember	July 1, 1991	June 30, 1995
Mary Linville	- Councilmember	July 1, 1991	June 30, 1995

The names and dates of commencement and termination of terms of office of the members of the Council and the Mayor during the adoption and enactment of the Bond and Notes Ordinance enacted by the Council of the Issuer June 6, 1991, and effective June 13, 1991, and the rate ordinance set forth in Section 12, all duly elected or appointed, as applicable, qualified and acting, were as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Franklin D. Heck	- Mayor	July 1, 1987	June 30, 1991
Terry L. Parsons	- Councilmember	July 1, 1987	June 30, 1991
Jimmy Methax	- Councilmember	July 1, 1987	June 30, 1991
Paul O. Davis	- Councilmember	July 1, 1987	June 30, 1991
Ron Lester	- Councilmember	Aug. 14, 1989	June 30, 1991
Tom Wilson	- Councilmember	July 20, 1989	June 30, 1991

The duly appointed, qualified and acting City Clerk-Treasurer of the Issuer is, and during the adoption and enactment of the Bond and Notes Ordinance enacted by the Council of the Issuer June 6, 1991, and effective June 13, 1991, was, Sheila A. Wheeler.

The names of the duly elected or appointed, as applicable, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Larry E. Smith	-	Chairman
Ted Rakes	-	Member
George McClennon, P.E.	-	Member

The names of the duly elected or appointed, as applicable, qualified and acting members of the Sanitary Board of the Issuer at the time of the petition of the Council of the Issuer to adopt and enact the Local Act, were as follows:

Franklin D. Heck	-	Chairman
Ted Rakes	-	Member
George McClennon, P.E.	-	Member

The duly appointed and acting counsel to the Issuer is George B. Morrone, III, Kenova, West Virginia.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or,

if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

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

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Local Act. All insurance for the System required by the Local Act is in full force and effect. The System is not presently covered by policies of flood or business interruption insurance, but will be if such coverages are available at reasonable cost.

10. GRANTS: As of the date hereof, the grant from the United States Environmental Protection Agency in the amount of \$467,280 and the grant from the Department of Housing and Urban Development (Small Cities Block Grant through the State of West Virginia) in the amount of \$274,500 are committed and in full force and effect.

11. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement which should be disclosed for the purpose for

which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

12. RATES: The Council of the Issuer has duly enacted a rate ordinance on May 7, 1991, effective May 14, 1991, setting rates and charges for the services of the System. The time for appeal of such rate ordinance has expired and there has been no appeal thereof. Such rate ordinance has not been vetoed by the Mayor of the Issuer.

13. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, all dated August 9, 1991, by his manual signature, and the undersigned City Clerk-Treasurer did officially cause the official seal of the Issuer to be affixed upon each of said Bonds and to be attested by her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

14. BOND PROCEEDS: On the date hereof the Issuer received from the Authority the agreed purchase price of the Series 1991A Bonds and the Series 1991B Bonds, being \$531,042 (100% of par value), there being no interest accrued thereon.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond and Notes Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks within a period of 14 consecutive days, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in a newspaper of general circulation in the County of Wayne and The City of Kenova, there being no newspaper published in The City of Kenova, together with a notice to all persons concerned, stating that the Bond and Notes Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond and Notes Ordinance, stating that any person interested may appear before the council at the public hearing held at a public meeting of council on the 6th day of June, 1991, at 7:30 p.m., in the Council Chambers of the City Hall of The City of Kenova and present protests, and stating that a certified copy of the Bond and Notes Ordinance was on file with the Governing Body at the office of the City Clerk-Treasurer of the Issuer for review by interested persons during the office hours of the Governing Body. At

such hearing all objections and suggestions were heard by the Governing Body and the Bond and Notes Ordinance became finally adopted and enacted as of the date of such public hearing, was not vetoed by the Mayor of the Issuer and became effective June 13, 1991, and remains in full force and effect.

16. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received a Final Order of the Public Service Commission of West Virginia entered July 23, 1991 (Case No. 91-002-S-CN), granting to the Issuer a Certificate of Convenience and Necessity with respect to the Project. The time for appeal of such order of the Public Service Commission of West Virginia entered on July 23, 1991, in Case No. 91-002-S-CN, has not expired prior to the date hereof; however, the Assistant Attorney General on behalf of the Department of Natural Resources and the staff of the Public Service Commission of West Virginia have stated in letters that no exceptions will be filed to that order, and no appeals will be taken. There are no intervenors, protestants or other parties of record in the case, other than the Issuer, the Department of Natural Resources and the Public Service Commission of West Virginia. The Issuer will not petition for appeal or otherwise challenge such order of the Public Service Commission of West Virginia entered on July 23, 1991, in Case No. 91-002-S-CN.

17. PRIVATE USE OF FACILITIES: The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including

the disproportionate related business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit, other than use as a member of the general public. All of the foregoing have been and shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

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

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

20. SPECIMEN BONDS: Delivered concurrently herewith are true and accurate specimens of the Bonds.

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

WITNESS our signatures and the official seal of THE CITY OF KENOVA on this 9th day of August, 1991.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Garry Smith

Mayor

Sheila A. Wheeler

City Clerk-Treasurer

J. B. Monroze III

Counsel to Issuer

08/07/91  
KENSJ.S3  
47214/91002



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A

CERTIFICATE AS TO ARBITRAGE

I, Larry E. Smith, Mayor of THE CITY OF KENOVA, in Wayne County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$508,101 aggregate principal amount of Sewer Revenue Bonds, Series 1991A, of the Issuer, dated August 9, 1991 (the "Series 1991A Bonds" or "Local Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or any predecessor thereto (the "Code"). I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds, hereinafter defined. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on August 9, 1991, the date on which the Bonds are to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bond and Notes Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted to not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments

or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond and Notes Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

6. The Series 1991A Bonds and the \$22,941 aggregate principal amount of Series 1991B Bonds (the "Series 1991B Bonds or "Supplemental Bonds"), which Series 1991B Bonds bear no interest, were sold on August 9, 1991, to the West Virginia Water Development Authority (the "Authority") for an aggregate purchase price of \$531,042 (100% of par). No accrued interest has been or will be paid on any of the Bonds. The Series 1991B Bonds are junior and subordinate to the Series 1991A Bonds. The Series 1991A Bonds and the Series 1991B Bonds are collectively herein referred to as the "Bonds."

7. The Series 1991A Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage facilities of the Issuer (the "Project"); (ii) paying the interest on the Series 1991A Bonds during the acquisition and construction of the Project and for a period not exceeding 12 months after completion of acquisition and construction of the Project; and (iii) paying costs of issuance thereof. The Series 1991B Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purpose of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying costs of issuance of the Series 1991B Bonds.

8. The Issuer will, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend in excess of \$100,000 on the Project constituting a substantial binding commitment, or has already done so. Acquisition, construction and equipping of the Project will commence immediately and will proceed with due diligence to completion, and, with the exception of proceeds constituting capitalized interest and any proceeds deposited in the respective Reserve Accounts for the Bonds, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of Costs of the Project on or before February 9, 1992. Acquisition and construction of the Project is expected to be completed by February, 1992.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at \$1,279,042. Sources and uses of funds for the Project are as follows:

Sources

Gross proceeds of Series 1991A Bonds	\$ 508,101
Gross proceeds of Series 1991B Bonds	22,941
EPA Grant	467,280
Small Cities Block Grant	274,500
Anticipated Investment Earnings	<u>6,220</u>
Total Sources	<u>\$1,279,042</u>

Uses

Acquisition and Construction of Project	\$1,225,887
Capitalized Interest in the Series 1991A Bonds	41,155
Funded Reserve for Series 1991A Bonds	-0-
Funded Reserve for Series 1991B Bonds	-0-
Costs of Issuance	<u>12,000</u>
Total Uses	<u>\$1,279,042</u>

The amount of Project costs not expected to be reimbursed or paid from grants and Series 1991B Bond proceeds is estimated to be at least equal to the gross proceeds of the Series 1991A Bonds. Except for the proceeds of the Series 1991A Bonds, the Series 1991B Bonds, the grants and interest earnings during construction, no other funds of the Issuer will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

10. Pursuant to Article V of the Bond and Notes Ordinance pursuant to which the Bonds are issued, the following special funds or accounts have been created or continued:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund;

(4) Series 1991A Bonds Sinking Fund, and within the Series 1991A Bonds Sinking Fund, the Series 1991A Bonds Reserve Account; and

(5) Series 1991B Bonds Sinking Fund, and within the Series 1991B Bonds Sinking Fund, the Series 1991B Bonds Reserve Account.

11. Pursuant to Article VI of the Bond and Notes Ordinance pursuant to which the Bonds are issued, the proceeds of the Series 1991A Bonds (and the Series 1991B Bonds) will be deposited as follows:

(1) Series 1991A Bond proceeds in the amount of \$41,155 will be deposited in the Series 1991A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Series 1991A Bonds during acquisition and construction of the Project and for a period not to exceed six months after completion thereof.

(2) Series 1991A Bond proceeds in the amount of \$-0- and Series 1991B Bond proceeds in the amount of \$-0- will be deposited in the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account, respectively.

(3) Series 1991A Bond proceeds in the amount of \$-0- will be applied to payment of certain advances made to the Issuer for the purpose of temporarily financing a portion of the Costs of the Project.

(4) The balance of the proceeds of the Series 1991A Bonds and the Series 1991B Bonds will be deposited in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

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

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

12. Moneys held in the Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 1991A Bonds and the Series 1991B Bonds, respectively, and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 1991A Bonds Sinking Fund and Series 1991A Bonds Reserve Account and the Series 1991B Bonds Sinking Fund and Series 1991B Bonds Reserve Account will be returned, not less than once each year, to the Issuer, and such amounts shall, during construction of the Project, be deposited into the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds, and then to the next ensuing principal payments due thereon.

13. Except for the Series 1991A Bonds Sinking Fund and the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Sinking Fund and Series 1991B Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Series 1991A Bonds or the Series 1991B Bonds, respectively, or which are pledged as collateral for the Series 1991A Bonds or the Series 1991B Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Series 1991A Bonds or the Series 1991B Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Series 1991A Bonds or the Series 1991B Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved designation plan producing a yield in excess of the yield on the respective Bonds have been or will be pledged to payment of the Bonds. None of the moneys received from the sale of the Series 1991A Bonds will be deposited in the Series 1991A Bonds Reserve Account or any other reserve or replacement fund, and none of the moneys received from the sale of the Series 1991B Bonds will be deposited in the Series 1991B Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1991A Bonds Reserve Account and Series 1991B Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Series 1991A Bonds and the Series 1991B Bonds, respectively, and will not exceed 125% of average annual principal of and interest on the Series 1991A Bonds and the Series 1991B Bonds, respectively. Amounts in the Series 1991A

Bonds Reserve Account and the Series 1991B Bonds Reserve Account, not to exceed 10% of the proceeds of the Series 1991A Bonds and the Series 1991B Bonds, respectively, if invested, will be invested without yield limitation. The establishment of the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account are required by the Authority, are vital to its purchase of the Series 1991A Bonds and the Series 1991B Bonds, respectively, and are reasonably required to assure payments of debt service on the Series 1991A Bonds and the Series 1991B Bonds, respectively.

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

14. The Issuer expects to enter into a contract within 6 months of the date hereof, or has already entered into such a contract, for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or \$100,000.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. Acquisition and construction is expected to be completed within 6 months.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Series 1991A Bonds and Series 1991B Bonds to the Authority.

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

19. With the exception of the amount deposited in the Series 1991A Bonds Sinking Fund for payment of interest on the Series 1991A Bonds and amounts deposited in the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account, if any,

all of the proceeds of the Series 1991A Bonds and the Series 1991B Bonds will be expended on the Project within 6 months from the date of issuance thereof.

20. The Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund (other than the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account therein) are intended primarily to achieve a proper matching of payments of debt service on the Series 1991A Bonds and the Series 1991B Bonds, respectively, each year. The Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund (other than the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Series 1991A Bonds and the Series 1991B Bonds, respectively, or 1 year's interest earnings on the Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund (other than the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account therein), respectively. Except as otherwise allowed, any money deposited in the Series 1991A Bonds Sinking Fund and in the Series 1991B Bonds Sinking Fund for payment of the principal of or interest on the Series 1991A Bonds and the Series 1991B Bonds, respectively (other than the Series 1991A Bonds Reserve Account and the Series 1991B Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 1991A Bonds Sinking Fund and the Series 1991B Bonds Sinking Fund (other than in the Series 1991A Reserve Account and the Series 1991B Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. All the proceeds of the Series 1991A Bonds which were used for the payment of costs of the Project will be expended for such purposes within three years of July 11, 1990.

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

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

24. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania, 19255.

25. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of Bonds or \$5,000,000 have been or will be used to make or finance loans to, any person who is not a governmental unit.

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

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

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

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

30. The Issuer is a governmental unit and has general taxing powers; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year 1991, the calendar year in which the Bonds are issued, is not reasonably expected to exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code. For purposes of this paragraph and for purposes of applying such Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes

of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer. No portion of the Bonds is issued to refund other obligations.

The Issuer believes that the Authority exclusively lends bond proceeds in a manner that does not result in its bonds being private activity bonds, as defined in the Code, and the Issuer believes that the use of the proceeds by each borrower from the Authority would not result in those proceeds being private activity bonds (if viewed as a separate issue).

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

32. The Issuer has either (a) funded the Series 1991A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Series 1991A Bonds in the then current or any succeeding year with the proceeds of the Series 1991A Bonds, or (b) created the Series 1991A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1991A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 1991A Bonds in the then current or any succeeding year. Moneys in the Series 1991A Bonds Reserve Account and the local sinking fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Series 1991A Bonds and will not be available to meet the cost of the Project.

33. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and the interest thereon.

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

35. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds,

(b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

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

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

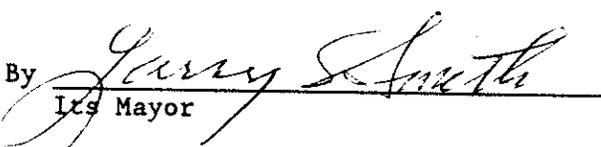
38. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

39. Steptoe & Johnson is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Series 1991A Bonds.

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

IN WITNESS WHEREOF, I have set my hand this 9th day of August, 1991.

THE CITY OF KENOVA

By   
Its Mayor

08/07/91  
KENSJ.T3  
47214/91002

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THE CITY OF KENOVA

Sewer Revenue Bonds  
Series 1991 A and Series 1991 B

ENGINEER'S CERTIFICATE

I, Gene R. Weekley, Jr., Registered Professional Engineer, West Virginia License No. 5021, of Kelley, Gidley, Blair & Wolfe, Inc., consulting engineers, of Charleston, West Virginia, hereby certify as follows:

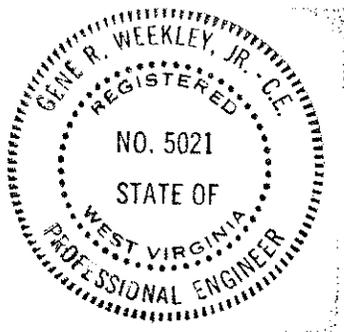
1. My firm is engineer for the acquisition and construction of additions, betterments and improvements (the "Project") for the existing sewerage system of the City of Kenova in Wayne County, West Virginia (the "Issuer"). Certain costs of such acquisition and construction are being financed by proceeds of the above-captioned bonds (the "Bonds") and certain grant proceeds from the Environmental Protection Agency and the West Virginia Small Cities Block Grant.

2. I hereby further certify that (i) my firm will take all reasonable steps to ensure that the Project will be acquired and constructed in accordance with the approved plans, specifications and designs prepared by my firm, or amendments thereto, and as described in the Application submitted to the West Virginia Water Development Authority (the "Authority") and approved by all necessary governmental bodies and will be situate wholly or chiefly within the boundaries of the Issuer; (ii) the Project is adequate for the purpose for which it was designed and all applicable and necessary governmental approvals, consents, exemptions, authorizations, certificates and permits for the acquisition and construction thereof have been obtained; (iii) I have examined and reviewed all plans, specifications, bid documents and construction contracts relating to the Project and all bids for acquisition and construction of the Project have been received in an amount and are otherwise compatible with the plan of financing described in said Application and I will ascertain that all contractors have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds will be verified for accuracy and completeness prior to commencement of acquisition and construction of the Project; (iv) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States of America necessary for acquisition and construction of the Project and, to the extent presently obtainable, the operation of the System; (v) the acquisition and construction of and funding for the Project should proceed to a successful conclusion within the time schedules proposed; (vi) the useful life of the facilities constituting the Project is not less than 40 years; (vii) the rates and charges for the sewerage system of the Issuer comply with the applicable provisions of the Loan Agreement and the Supplemental Loan Agreement by and between the Authority and the Issuer; (viii) the net proceeds of the Bonds, together with the proceeds of grants and other moneys on deposit or to be simultaneously deposited and irrevocably committed therefor, will be sufficient to pay the costs of acquisition and construction of the Project as set forth in the Application

submitted to the Authority as of the date of the Loan Agreement; and (ix) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 9th day of August, 1991.

[SEAL]



KELLEY, GIDLEY, BLAIR & WOLFE, INC.

By *Gene R. Weekley, Jr.*  
Its VICE PRESIDENT

8/6/91

DATE: August 9, 1991

AMENDED SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: The City of Kenova  
 TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project

1. Construction (610,000 + 168,345 + 89,435)	\$ 867,780	
2. Technical Services (204,344 + 36,370)	\$ 240,714	
3. Legal and Fiscal	\$ 20,000	
4. Administrative (11,733 + 16,040)	\$ 27,773	
5. Site and Other Lands	\$ ---	
6. Step I and/or Step II (Design) or Other Loan Repayment (Specify Type: _____)	\$ _____	
7. Interim Financing Costs	\$ 17,500	
8. Contingency	\$ 53,120	
9. Total of Lines 1 through 8		\$ 1,226,887

B. Sources of Funds

10. Federal Grants: <sup>1</sup> (Specify Source)	Environmental Protection Agency	\$ 467,280	
11. State Grants: <sup>1</sup> (Specify Source)	Small City Block Grant	\$ 274,500*	
		\$ _____	
		\$ _____	
12. Other Grants: <sup>1</sup> (Specify Source)		\$ _____	
		\$ _____	
13. Any Other Source <sup>2</sup> (Specify)	Estimated interest earnings	\$ 6,220	
		\$ _____	
14. Total of Lines 10 through 13			\$ 748,000
15. Net Proceeds Required from Bond Issue (Line 9 less Line 14)			\$ 478,887

C. Cost of Financing

16. Capitalized Interest (Construction period plus six months)	\$ 41,155	
17. Funded Reserve Account <sup>3</sup>	\$ _____	
18. Other Costs <sup>4</sup>	\$ 11,000	
19. Total Cost of Financing (Lines 16 through 18)		\$ 52,155
20. Size of Bond Issue (Line 15 plus Line 19)		\$ 531,042

\*Grant was for \$323,000, but only \$274,500 is available to be drawn unless cost overruns are incurred.



LARKIN C. CALHOUN, JR., CPA  
P. O. Box 267  
Pineville, West Virginia 24874

August 9, 1991

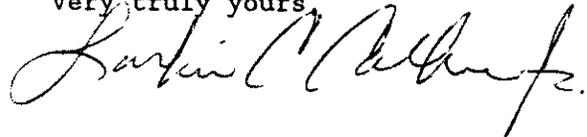
The City of Kenova  
Sewer Revenue Bonds,  
Series 1991A and Series 1991B

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

Ladies and Gentlemen:

Based upon the rates and charges as set forth in the ordinance of The City of Kenova finally enacted May 5, 1991, and effective May 14, 1991, and projected operation and maintenance expenses and anticipated customer usage as furnished to me by Kelley, Gidley, Blair & Wolfe, Inc., consulting engineers, it is my opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system of The City of Kenova, will pay all repair, operation and maintenance expenses and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Sewer Revenue Bonds, Series 1991A and Series 1991B, to be issued to West Virginia Water Development Authority, and all other obligations secured by or payable from the revenues of the System prior to or on a parity with such Bonds, if any.

Very truly yours,



08/05/91  
KENSJ.V2  
47214/91002

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CHARTER  
CITY OF  
KENOVA, WEST VIRGINIA

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EDITOR'S NOTE: The Kenova Charter was adopted at an election held June 21, 1986. Dates appearing in parentheses following a section heading indicate those provisions were subsequently amended, enacted or repealed on the date given.

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**CHARTER  
CITY OF  
KENOVA, WEST VIRGINIA**

**ARTICLE ONE POWERS AND FORM OF GOVERNMENT**

**SECTION 1.1 INCORPORATION.**

The inhabitants of the City of Kenova, West Virginia, within the corporate limits as now established or as hereafter established, shall continue to be a Municipal corporation under the name of "The City of Kenova" and in the manner provided by law.

**SECTION 1.2 POWERS OF CITY.**

This City, incorporated under this Charter, shall have all the powers granted to municipal corporations and to cities of its class by the constitution and laws of the State of West Virginia, together with all the implied powers necessary to carry into execution all powers granted.

**SECTION 1.3 CONSTRUCTION.**

The powers of the City under this Charter shall be construed liberally in favor of the City and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general power stated in this Article.

**SECTION 1.4 FORM OF GOVERNMENT.**

The municipal government provided by this Charter shall be the "strong mayor plan". All powers of the City shall be exercised in the manner prescribed by this Charter or by general law.

**ARTICLE TWO GENERAL PROVISIONS**

**SECTION 2.1 DEFINITION OF RESIDENT.**

As used in this Charter, the term "resident" shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of the City of Kenova, who has the intent to maintain said usual and bona fide place of abode for an indefinite period of time in the future, and who is eligible to register to vote.

**SECTION 2.2 RESIDENCY REQUIREMENT.**

Any person elected to any City office or any person appointed to any City board or commission under this Charter shall be a resident at the time elected or appointed and shall remain a resident of the City of Kenova during his or her respective tenure in office. Any person employed in or appointed to a full-time position on the City payroll after July 1, 1986 shall be a resident at the time employed or appointed or shall become a resident within ninety days from the date of employment or appointment and shall remain a resident during the period of employment or appointment. There shall be no exception or waiver of the requirements contained in this section and any violation of any requirement contained herein shall result in a forfeiture of the respective office or position.

**SECTION 2.3 CONFLICT OF INTEREST.**

Any City officer or employee who has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, materials, supplies or services to the City or to any contractor supplying the City, shall make known that interest to the Mayor and Council and shall refrain from voting upon or otherwise participating in his or her capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit the office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the Mayor or Council. A "substantial financial interest" as used herein, shall be deemed to be an interest amounting to more than five percent of the particular business enterprise or contract.

**SECTION 2.4 BONDS.**

Before entering the duties of their office, each member of Council, the Mayor, the City Clerk-Treasurer and such other personnel as Council may require, shall give bond for the faithful performance of their duties, payable to the City of Kenova, in such amounts and with such corporate surety as may be approved by Council. Council may provide for obtaining a blanket bond covering all City officers and employees. The premiums on all bonds shall be paid by the City; provided, however, that the premiums shall not be in excess of the premium schedule filed by the bonding company with the West Virginia Commissioner of Insurance or successor. If any person elected, appointed or employed shall not be able to give the required bond within ten days after assuming an office or position, said office or position shall, by reason thereof, become vacant.

**SECTION 2.5 OATH (AFFIRMATION).**

All elected and appointed officers and such employees as Council may require, shall take and subscribe to the following oath (affirmation) to be filed and kept in the office of the City Clerk-Treasurer:

"I, \_\_\_\_\_, solemnly swear (or affirm) that I will support the Constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of \_\_\_\_\_ to the best of my skill and judgment.

Signature \_\_\_\_\_."

**SECTION 2.6 GENERAL ATTENDANCE REQUIREMENT.**

If a member of any City agency, board, commission or Council is absent from forty or more percent of the regularly scheduled meetings in any twelve month period or from three consecutive regularly scheduled meetings of said agency, board, commission or Council, the office, position or appointment shall become vacant and such vacancy shall be filled according to applicable law.

**SECTION 2.7 PUBLIC ACCESS.**

All meetings, records and documents of City departments, agencies, boards, commissions and Council shall be open to the public under reasonable regulations established by Council; provided, however, said regulations and any exclusionary clauses therein shall be subject to the general laws of the State of West Virginia.

**SECTION 2.8 ARTICLE AND SECTION TITLES.**

The article and section titles or headings in this Charter are intended for convenience only to indicate the content of the article or section and shall not be deemed or taken to be a part of the article or section.

**SECTION 2.9 SEPARABILITY CLAUSE.**

If any article, section, subsection, paragraph, sentence, clause or word of this Charter is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality or application of any other portion of this Charter.

**SECTION 2.10 REFERENCE TO LAW.**

A reference contained in this Charter to general law shall be construed to mean the respective law as it exists on the effective date of this Charter or as it may thereafter be amended. Where additional parts are added to the subject matter of such law referred to in this Charter, the reference shall include such additional parts.

**SECTION 2.11 REMOVAL OF OFFICERS.**

Any elected or appointed City officer may be removed from office as prescribed by the general laws of the State of West Virginia or by this Charter.

**SECTION 2.12 EFFECTIVE DATE.**

This Charter shall become effective on July 1, 1986; provided, however, the Mayor and Council in office on said effective date shall serve, with the Mayor continuing to be the presiding officer for and voting member of Council without veto power, until July 1, 1987.

**ARTICLE THREE ELECTED OFFICER - MAYOR****SECTION 3.1 POWERS AND DUTIES OF MAYOR.**

The Mayor shall be the chief executive officer of the City and shall exercise all powers and perform all duties vested in or imposed upon him or her by this Charter, ordinance, or general law. The Mayor shall exercise directly, or through authorized and duly appointed representatives, supervision over all executive and administrative work of the City and shall supervise the investment of all City funds. The Mayor shall report upon the state of the City in writing at least annually to Council and may recommend to Council such measures as he or she deems to be in the best interests of the City and its inhabitants.

**SECTION 3.2 MAYOR OR REPRESENTATIVE MAY ATTEND COUNCIL MEETINGS.**

The Mayor or a designated representative who must be an employee of the City may attend every meeting of Council and may express views, orally or in writing, on matters pending before Council. The Mayor shall have no right to introduce any motion, resolution, ordinance or amendments thereto, nor to vote on questions before Council.

**SECTION 3.3 ACTING MAYOR.**

In case of the Mayor's temporary absence, the President of Council shall serve as Acting Mayor. A vacancy shall be created in the office of Mayor if the Mayor's temporary absence exceeds sixty days.

**SECTION 3.4 VACANCY OF OFFICE OF MAYOR.**

If a vacancy occurs in the office of Mayor for any reason, the President of Council shall become Mayor after resigning from Council. If the President declines to resign from Council and become Mayor, the other members of Council shall vote by secret ballot during the first Council meeting after the vacancy in the office of Mayor occurs until a new Mayor is selected from the membership of Council or if necessary, from the residents of the City eligible to the office of Mayor. Any Council member so selected must resign from Council prior to assuming the office of Mayor. The new Mayor filling a vacancy shall hold office for the unexpired term or until a successor has been duly elected and qualified.

**SECTION 3.5 MAYOR'S POWER OF APPOINTMENT.**

The Mayor shall appoint, with the approval of Council, the City Clerk-Treasurer, the City Judge, and all other City officers, employees and members of agencies, boards and commissions as provided by general law, this Charter or ordinance and may, except where prohibited by general law, this Charter, ordinance or any duly adopted merit or civil service systems, remove any City officer, employee or member of an agency, board or commission at the Mayor's pleasure; provided, however, any officer or employee so removed who is not covered by a duly adopted merit or civil service system shall have a right to appeal the removal to Council, which after holding a hearing at which the officer or employee and the Mayor may testify, may by an affirmative vote of three members of Council retain said officer or employee. Excluding employees, appointments by the Mayor shall be made within ten days after the Mayor takes office or after a vacancy in an office or in membership occurs. The Mayor shall submit the names of designated appointees and prospective employees to Council for approval or disapproval. If Council fails to act within fifteen days from its receipt of the name of any designated appointee or prospective employee, said name shall be deemed approved by Council. If a name is disapproved by Council, the Mayor shall submit a list with the names of three persons to Council (which list may include the original name), and Council shall approve one of those three persons.

If Council fails to act within fifteen days of its receipt of the list, the Mayor shall appoint or employ one of the three persons on said list.

**SECTION 3.6 APPOINTMENT OF LEGAL COUNSEL.**

The Mayor with the approval of Council may contract for the services of general and special legal counsel as required to conduct City business. Any general counsel obtained shall be an attorney licensed to practice law in West Virginia and shall serve as attorney for all elected and appointed City officers; for all City boards, agencies and commissions; and at the direction of the Mayor, for any other officer or employee of the City in connection with their official duties.

**ARTICLE FOUR ELECTED OFFICERS – COUNCIL.****SECTION 4.1 POWERS OF COUNCIL.**

All legislative powers of the City shall be vested in Council which shall be the governing body of the City.

**SECTION 4.2 ORGANIZATION OF COUNCIL.**

Council shall consist of five members elected at large. The President of Council shall be the member of the newly elected Council who received the highest number of votes in the latest City election. If two or more members of Council tied with the highest number of votes in said City election, the other members of Council shall vote by secret ballot during the first Council meeting to determine which of the tied members of Council shall be President. The member of the newly elected Council who received the second highest number of votes in said City election shall be the Vice President of Council. The Vice President shall assume the duties of the President during the temporary absence of the President and shall become President of Council if a vacancy occurs for any reason in that office. A tie among members for the office of Vice President shall be decided as prescribed above for the office of President. If vacancies occur simultaneously in both the offices of President and Vice President, Council shall select its officers from its membership by secret ballot. The President shall be the presiding officer and shall prepare an agenda for each Council meeting which shall be posted at the office of the City Clerk-Treasurer at least twelve hours prior to said meeting. A copy of each agenda shall be delivered to the office of the Mayor at the same time it is posted, and may be delivered to members of Council as they may direct. Each member of Council, including the President and Vice President, shall be entitled to one vote on any matter before Council. Three members of Council shall constitute a quorum, and no business shall be transacted by Council in absence of such quorum. Council shall determine and adopt its own rules for the conduct of its meetings. Council shall hold regular meetings not less than monthly at Council chambers or other suitable public place at a time and on a day to be established by Council. Special meetings may be called at any time, upon reasonable notice given by the President of Council, and shall be so called by the President upon the written request of a majority of all members of Council. The requirement of reasonable notice, may be satisfied by delivering to each member of Council, the Mayor and the City Clerk-Treasurer a written notice of the time, place and purpose of the special meeting in the method provided by general law for the service of process in a civil action at least twelve hours prior to the time set for the meeting or by such other method as Council by ordinance may provide.

**SECTION 4.3 POWER TO CONDUCT INVESTIGATIONS.**

Council shall have power to conduct investigations of the operation of any office, department, division, agency, commission or board of the City and of any subject upon which it may legislate.

**SECTION 4.4 VACANCIES ON COUNCIL.**

If a vacancy on Council shall occur for any reason, Council shall select a resident with the requisite qualifications by a majority vote of its remaining members at a meeting held not less than fifteen nor more than thirty days following the declaration of such vacancy. The person so selected shall hold office for the unexpired term or until a successor has been duly elected and qualified.

## **ARTICLE FIVE APPOINTED OFFICERS**

### **SECTION 5.1 CITY CLERK-TREASURER.**

The City Clerk-Treasurer shall give notice of and attend all Council meetings. The City Clerk-Treasurer shall keep in a journal an accurate record of all Council proceedings. The journal shall show the passage of ordinances and resolutions by inserting the title of said ordinance or resolution. The City Clerk-Treasurer shall keep in a well-bound book, separate from the journal of Council proceedings, a record of all adopted ordinances and resolutions, which book shall show the date of the passage of such ordinances or resolutions, and shall contain the full text of such ordinances or resolutions. Both the journal of proceedings and the book of ordinances and resolutions shall be fully indexed and open to inspection by the public. The City Clerk-Treasurer shall be the chief election official for all City elections. The City Clerk-Treasurer shall: collect all taxes, fines and fees due to the City; conduct an annual inventory of all City property which had, at the time of purchase, a value of one thousand dollars or more; prescribe the forms of receipts, requisitions, vouchers, bills or claims to be used by all offices, agencies, boards and commissions of the City; examine all contracts and other documents by which the City incurs financial obligation; inspect and audit before payment all purchase orders, bills, invoices, payrolls and other evidence of claims, demands or charges against the City; inspect and audit any account or record of financial transactions which may be maintained by any office, agency, board or commission of the City; provide Council and the Mayor with a complete financial statement for all City accounts monthly; and perform such other duties as may be required by the Mayor, this Charter, ordinances or general law.

### **SECTION 5.2 CITY JUDGE.**

The Judge of the City Court shall be at least twenty-five years of age at the time of appointment, shall have earned a high school or general equivalency diploma, and shall not have been convicted of any felony or of any misdemeanor involving moral turpitude. The Judge shall preside over the City Court and, with respect to offenses over which the City Court has jurisdiction, shall have all the powers and duties which a Magistrate or successor has with regard to violation of the criminal law of the State of West Virginia. The Judge shall have the power to issue warrants, upon complaint under oath of any person or officer, for the arrest of anyone charged with any City offense within the jurisdiction of the Court or for search and seizure in connection with violation of a City ordinance. The Judge shall try and determine all cases over which the City Court has jurisdiction and, within the limits prescribed by ordinance or general law, shall have the power to summon persons or subpoena witnesses for the trial of any case before the Court, to compel the attendance of police officers of the City or to require the Chief of Police to enforce all judgments or orders entered by the Court in the exercise of its powers. In City Court proceedings for the recovery of fines or for the enforcement of penalties fixed by ordinance or other law, the Court shall, so far as applicable, conform to the provisions of general law governing civil proceedings before a Magistrate of the State of West Virginia or successor. The Judge shall have such other powers and duties as Council may by ordinance provide pursuant to general law.

### **SECTION 5.3 OTHER APPOINTED OFFICERS.**

Other officers may be appointed as necessary to conduct City business.

**SECTION 5.4 ACTING APPOINTED OFFICERS AND VACANCIES.**

In the event of the temporary absence of any appointed officer, the Mayor shall appoint a person, other than a member of Council, with the qualifications and under the conditions required by this Charter to serve as an acting officer during such absence. A vacancy shall be created in any appointed office if the officer's temporary absence exceeds sixty days. Any vacancy in any appointed office shall be filled in accordance with Section 3.5.

**ARTICLE SIX OPERATING PROCEDURES.****SECTION 6.1 SUBMISSION OF ORDINANCES AND RESOLUTIONS TO MAYOR.**

Within five days after the adjournment of any Council meeting, the City Clerk-Treasurer shall present to the Mayor the record of proceedings of the meeting and all ordinances and resolutions adopted at the meeting. The Mayor, within seven days of receipt of an ordinance or resolution, shall return it to the City Clerk-Treasurer with his or her approval signature, or with his or her written veto, or the Mayor may not act. If the ordinance or resolution is signed by the Mayor, it shall become effective as specified in the ordinance or resolution. If the ordinance or resolution is disapproved by veto, the Mayor shall attach thereto a written statement explaining the reasons for the veto. If the Mayor does not act, the ordinance or resolution shall become effective at noon on the seventh day after it is received by the Mayor. Ordinances or resolutions vetoed by the Mayor shall be presented by the City Clerk-Treasurer to Council for its consideration at its next regular meeting and should Council then and thereafter adopt the ordinance or resolution by an affirmative vote of at least four of its members, the ordinance or resolution shall be effective on the date specified by Council, but in no event less than fifteen days after the date of final passage. The Mayor's veto power shall extend, in accordance with the above procedure, to disapproving or reducing any individual appropriation item in the budget or any ordinance or resolution.

**SECTION 6.2 BUDGET.**

Annually the Mayor shall submit to Council the budget for the next fiscal year. The budget shall provide a complete financial plan for all City offices, boards, agencies and commissions for the next fiscal year. It shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicate the proposed tax levies, outline all proposed expenditures including debt service and salaries, detail the relationship of the proposed expenditures to a proposed work and activity program, propose capital expenditures and the method of financing such capital expenditures, and display the comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures in the budget for any fiscal year shall not exceed the total of estimated income.

**SECTION 6.3 COUNCIL ACTION ON BUDGET.**

Council shall hold a public hearing on the proposed budget annually after publishing an advance notice of said hearing in one or more newspapers of general circulation in the City. After the public hearing, Council may adopt the budget with or without amendment. In amending the budget, Council may add or increase programs and amounts and may delete or decrease programs or amounts, except expenditures required by law or for debt service or for estimated cash deficits; provided, however, no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income submitted by the Mayor. Council shall adopt the budget on or before the date it enters its order adopting the statutory levy estimate and laying the levies. Adoption of the budget shall constitute appropriation of the amounts specified therein as expenditures from the funds indicated.

**SECTION 6.4 ADMINISTRATION OF BUDGET.**

Within sixty days from the beginning of each fiscal year, the City Clerk-Treasurer shall determine the actual carry-over balance, whether surplus or deficit, of all accounts of the City and shall submit a report of said balance to the Mayor and Council. The Mayor shall submit to Council amendments to the budget, reflecting how surplus funds are to be used or how a deficit is to be eliminated, for approval by Council. At any time the Mayor may propose to Council for its approval the transfer of unencumbered funds within City budget accounts, except as otherwise provided by general law. Annually the City Clerk-Treasurer shall cause to be published in one or more newspapers of general circulation in the City a financial statement of income and expenditures for all City accounts for the previous fiscal year. The requirements of the Tax Department of the State of West Virginia or its successor shall be met in the preparation, submission and administration of the annual budget.

**SECTION 6.5 SALARIES.**

Except as otherwise provided by general law, the Mayor shall in the budget propose the salaries of all City employees, appointed officers, the members of Council and the Mayor; provided, however, any change in the salary of the Mayor or of Council members must also be adopted by ordinance, which ordinance shall not become effective during the current term of any Mayor or Council member. Beginning with the Council elected in 1987 and continuing thereafter, all members of Council shall be paid a fixed sum for each regular or special Council meeting attended not to exceed the annual salary limit which sum and limit shall be set in the adopted budget. In no event shall any Council member receive compensation for any meeting which he or she did not attend. No officer or employee of the City shall be entitled to receive compensation for more than one position in City government even though he or she performs the duties of two or more positions therein. The Mayor and Council in office at the time the budget for the 1987-88 fiscal year is prepared shall, by ordinance adopted prior to the submission of said budget to the State, set the salaries for the Mayor and Council members who will take office July 1, 1987.

**SECTION 6.6 COMPETITIVE BIDDING.**

Before any employee or any elected or appointed officer of the City shall make any purchase of or contract for supplies, materials, equipment or services for more than one thousand dollars, he or she shall give ample opportunity for competitive bidding or quotations by qualified vendors under such rules and regulations as Council shall prescribe; provided, however, Council shall not exempt any contract, purchase or sale of more than one thousand dollars from the requirement of competitive bidding.

**SECTION 6.7 PERSONNEL POLICY.**

Employment, appointments and promotions in City government shall be made according to merit and fitness. No person in the employment of the City or seeking employment with the City shall be appointed, employed, compensated, promoted, reduced, removed or in any way favored or discriminated against because of race, sex, religion, age, handicap, national origin, or kinship.

**SECTION 6.8 PROHIBITIONS.**

Except as otherwise provided by general law, no person in City government shall directly or indirectly solicit any assessment, subscription or contribution for any political purpose whatever from any officer or employee of the City. Except for the Mayor and members of Council, no officer or employee of the City shall take any active part in the management or promotion of any City Political campaign. No person who holds an elected public office shall, at the same time, be an employee or appointed officer of the City. Any person who willfully violates any of the provisions of this section shall be subject to such punishment as Council shall, by ordinance, prescribe and such person shall forfeit the City office or position he or she holds and shall, for a period of five years, be ineligible for any City appointment or employment. Neither Council nor any member thereof shall direct, interfere or obstruct the appointment or removal of any City employee, except as provided by this Charter or general law. Neither Council nor any member thereof shall give orders to any subordinate of the Mayor either publicly or privately, except as provided by this Charter or general law. Violation of the provisions of this section by any Council member shall constitute official misconduct. Nothing herein contained however, shall prohibit any Council member from bringing to the attention of the Mayor any fact or circumstance which may indicate misconduct or deficiency on the part of any City personnel.

**ARTICLE SEVEN NOMINATIONS AND ELECTIONS.****SECTION 7.1 GENERAL ELECTION LAWS TO CONTROL.**

Except as otherwise provided herein, the provisions of general law with respect to primary, general and special elections, so far as applicable, shall govern the nomination and election of the Mayor and members of Council and shall govern any special City elections.

**SECTION 7.2 BALLOTS FOR CITY ELECTIONS.**

The ballot for all City elections shall contain the names of all candidates and issues to be presented to the voters. All candidates shall run as individuals without party affiliation and shall be listed on the ballot by name only. The order in which the names of candidates appear on the ballot shall be determined by a drawing of lot conducted by the City Clerk-Treasurer in accordance with general law. Not less than ten days prior to any election, the City Clerk-Treasurer shall cause a sample ballot to be published in one or more newspapers of general circulation in the City.

**SECTION 7.3 FILING AS A CANDIDATE.**

Any person eligible to the office of Mayor or member of Council of the City shall be placed on the primary ballot after filing a certificate of candidacy, a petition and a filing fee in a timely manner with the City Clerk-Treasurer. The certificate, the petition and the fee must be delivered to the City Clerk-Treasurer during the month of January next preceding the primary election day or if mailed, shall be postmarked before midnight on the thirty-first day of said January.

(a) The certificate of candidacy shall be in the following form:

" Certificate of Candidacy

I hereby certify that I am a candidate for election as \_\_\_\_\_ Mayor or \_\_\_\_\_ Member of Council (check one) of the City of Kenova, West Virginia, and desire my name be printed on the ballot for the primary election of said City to be held on the \_\_\_\_\_ day of April, \_\_\_\_\_; that my residence is in Kenova at \_\_\_\_\_; that my occupation is \_\_\_\_\_; that I am eligible to hold the office I am seeking and that I would accept nomination and election to that office if nominated and/or elected.

\_\_\_\_\_  
Signature of Candidate

State of West Virginia  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

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

"(b) The petition to be filed shall be in the following form:

"We, the undersigned qualified registered voters of the City of Kenova hereby petition that the name of \_\_\_\_\_, whose residence is at \_\_\_\_\_ in Kenova, be placed on the ballot for the primary election to be held on the \_\_\_\_\_ day of April, \_\_\_\_\_ as a candidate for \_\_\_\_\_.

Name	Address	Princinct	Date of Signing"
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A petition shall be filed separately for each candidate and shall be signed by at least twenty-five qualified registered voters of the City to be valid. Each such voter shall be entitled to sign only the petition for one candidate for Mayor and only the petitions for five different candidates for Council prior to any primary election.

(c) The filing fee for the office of Mayor shall be a minimum of fifty dollars; the filing fee for the office of member of Council shall be a minimum of twenty-five dollars. Council may by ordinance increase the filing fees; provided, however, that the respective filing fee for an office shall never exceed one-twelfth of the annual salary for that office in effect at the time of passage of said ordinance. In accordance with general law, Council may by ordinance provide for the waiver of such filing fees only in the case of a candidate who files a certificate of indigence.

The City Clerk-Treasurer shall receive the certificate of candidacy properly completed, shall verify the signatures on each petition through comparison with voter registration records, and shall collect the filing fee prior to placing the name of a candidate on the primary ballot.

**SECTION 7.4 VOTER REGISTRATION RECORDS; SUPPLIES AND DEVICES;  
POLL WORKERS.**

In all City elections, the permanent registration of voters used in county and state elections shall be used. Council may by resolution contract with the Wayne County Commission or its successor to provide necessary supplies and devices for City elections. Council shall by resolution appoint a sufficient number of poll workers to conduct any City election and set the level of compensation for said workers not to exceed the limits of compensation established by general law.

**SECTION 7.5 ELECTION DATES.**

The primary election shall be held on the first Tuesday of April, 1987 and on such day in each fourth year thereafter. The general election shall be held on the first Tuesday of June, 1987 and on such day in each fourth year thereafter except as provided below. The names of the two candidates for Mayor and the names of the ten candidates for Council which receive the highest number of votes in any primary election shall be placed on the general election ballot; provided, however, if in any primary election, the names of two or fewer candidates for Mayor and of ten or fewer candidates for council appear on the primary ballot, the candidate for Mayor and the five Council candidates receiving the highest number of votes in the primary shall be declared elected and the general election for that year will not be held.

**SECTION 7.6 CANVASS AND CONTESTS.**

On the first Monday following any election, Council shall canvass the returns of the election and declare and certify the result within five days thereafter. In case of a contest, Council shall be the judge of the nomination, election and qualification of all candidates.

**SECTION 7.7 TERMS.**

The terms of Mayor and Council shall run concurrently and shall be four years beginning on July first of each election year. No individual who has been elected to two full and consecutive four-year terms in a particular office shall be eligible for reelection to said office, unless a period of four years shall have passed since the expiration of said individual's last previous term in said office.

**SECTION 7.8 QUALIFICATIONS OF MAYOR AND COUNCIL.**

Prior to becoming a candidate for Mayor or for Council, a person shall be a citizen of the United States and the State of West Virginia, shall be a resident of the City of Kenova, and shall be at least twenty-five years of age.

**SECTION 7.9 RECALL.**

The question of the recall of the Mayor or a member of Council shall be submitted to the qualified registered voters of the City at a special election to be held not less than thirty nor more than ninety days after a petition bearing the signatures of not less than twenty percent of the qualified registered voters of the City is delivered to the City Clerk-Treasurer, who shall verify the signatures through comparison with voter registration records within seven days after receipt. Upon certification of the results of said election, if a majority of those voting on the question have favored recall, the office of the individual so recalled shall be vacant. No recall petition shall be filed against any officer within six months after he or she takes office nor within six months prior to the end of his or her term. No officer shall be subjected to more than one recall election during a term of office.



CHAPTER THREE - Legislative  
Art. 111. Council.  
Art. 113. Ordinances and Resolutions.

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ARTICLE 111  
Council

111.01 Meetings; special sessions.

CROSS REFERENCES

- Conflict of interest - see CHTR. Sec. 2.3
  - Attendance requirement - see CHTR. 2.6
  - Council generally - see CHTR. Art. 4
  - Term - see CHTR. Sec. 7.7
  - Qualifications - See CHTR. Sec. 7.8
  - Open meeting law - see W.Va. Code Art. 6-9A
  - General powers - see W.Va. Code Art. 8-12
  - Adoption of rules - see W.Va. Code 8-12-5(45)
  - Extraterritorial exercise of powers - see W.V. Code 8-12-19
- 

**111.01 MEETINGS; SPECIAL SESSIONS.**

Council shall meet in regular assembly on the third Thursday at the hour of 7:30 p.m.

Council may assemble in special sessions at any date and hour whenever the press of business requires.  
(Res. 8-11-83)



**ARTICLE 113**  
**Ordinances and Resolutions**

**EDITOR'S NOTE:** There are no sections in Article 113.  
This article has been established to provide a place for  
cross references and future legislation.

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**CROSS REFERENCES**

Submission of ordinances and resolutions to Mayor – see CHTR.  
Sec. 6.1  
To make powers effective – see W.Va. Code 8-11-1  
Delegating discretion – see W.Va. Code 8-11-2  
Action required to be by ordinance – see W.Va. Code 8-11-3,  
8-5-12  
Procedures – see W.Va. Code 8-11-4  
Penalty limitations – see W.Va. Code 8-12-5(57); 8-11-1



**CHAPTER FIVE -Administrative**

- Art. 123. Mayor.
  - Art. 125. Clerk-Treasurer.
  - Art. 127. City Attorney.
  - Art. 129. Police Department.
  - Art. 131. Fire Department.
  - Art. 133. Boards and Commissions Generally.
  - Art. 135. Sanitary Board.
  - Art. 137. War Memorial Board.
  - Art. 139. Parks and Recreation Board.
  - Art. 145. Employment Provisions.
- 

**ARTICLE 123****Mayor**

**EDITOR'S NOTE:** There are no sections in Article 123. This article has been established to provide a place for cross references and future legislation.

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**CROSS REFERENCES**

- Conflict of interest - see CHTR. Sec. 2.3
- Bond - see CHTR. Sec. 2.4
- Oath - see CHTR. Sec. 2.5
- General provisions - see CHTR. Art. 3
- Submission of ordinances and resolutions to Mayor - see CHTR. Sec. 6.1
- Budget - see CHTR. Sec. 6.2
- Term - see CHTR. Sec. 7.7
- Qualifications - CHTR. Sec. 7.8
- Powers and duties generally - see W.Va. Code 8-10-1



**ARTICLE 125  
Clerk-Treasurer**

**125.01 Issuance of warrants; oaths;  
bonds.**

**CROSS REFERENCES**

General provisions - see CHTR. Sec. 5.1  
Administration of budget - see CHTR. Sec. 6.4  
Supervision of public offices - see W.Va. Code Art. 6-9  
Purchasing; competitive bidding - see W.Va. Code 8-12-10  
Collection of moneys - see W.Va. Code 8-13-15 et seq.  
Financial statements - see W. Va. Code 8-13-23  
Accounting principles; funds - see W.Va. Code 8-13-17 et seq.

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**125.01 ISSUANCE OF WARRANTS; OATHS; BONDS.**

(a) Pursuant to the authority as set forth in West Virginia Code 8-10-4, as amended, the Clerk-Treasurer or Assistant Clerk-Treasurer is hereby authorized and directed, in the absence of the Mayor and/or Municipal Judge to issue warrants for arrest for the violation of ordinances of the City, to administer oaths and to accept and approve sureties and bonds.

(b) The authority herein provided shall be upon the appointment and confirmation by the governing body of such Clerk-Treasurer or Assistant Clerk-Treasurer to utilize such authority, which authority may be hereafter removed by a majority vote of and by the governing body.  
(Ord. 7-26-84)



**ARTICLE 127**  
**City Attorney**

EDITOR'S NOTE: There are no sections in Article 127. This article has been established to provide a place for cross references and future legislation.

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**CROSS REFERENCES**

Appointment of legal counsel - see CHTR. Sec. 3.6

Hiring special counsel - see W.Va. Code 8-10-1a

Notice of suit against municipality - see W.Va. Code 8-12-2



# CITY OF KENOVA

P. O. Box 268 • KENOVA, WV 25530  
(304) 453-1571

FRANKLIN D. HECK, MAYOR  
COUNCIL: JIM YORK  
LARRY SMITH, PAUL DAVIS, JIMMY METHAX

JULY 1, 1987

"I, Franklin D. Heck, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Mayor to the best of my skill and judgments.

Franklin D. Heck  
Signature

Ronald T. Rabe  
Witness

State of W. Va.

County of Wayne

This day the 1st day of July 1987 Franklin D. Heck did sign his name to the above writing in my presence.

Ronald T. Rabe  
Notary Public  
My Comm. exp 3-29-86

# CITY OF KENOVA

P. O. Box 268 • KENOVA, WV 25530  
(304) 453-1571

FRANKLIN D. HECK, MAYOR

COUNCIL: JIM YORK

LARRY SMITH, PAUL DAVIS, JIMMY METHAX

JULY 1, 1987

"I, Terry L. Parsons, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgments.

Terry L. Parsons  
Signature

Ronald T. Rabun  
Witness

State of W. Va.  
County of Wayne

This day the 1st day of July 1987 Terry L. Parsons did sign his name to the above writing in my presence.

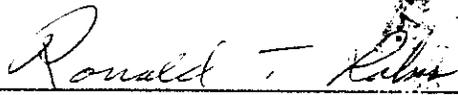
Ronald T. Rabun  
Notary Public

My Comm. exp. 3-29-86

STATE OF WEST VIRGINIA,  
COUNTY OF WAYNE

Subscribed and sworn to before me this 1st day of July,  
1987.

My commission expires March 29, 1996.

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

# CITY OF KENOVA

P. O. Box 268 • KENOVA, WV 25530  
(304) 453-1571

FRANKLIN D. HECK, MAYOR  
COUNCIL: JIM YORK  
LARRY SMITH, PAUL DAVIS, JIMMY METHAX

JULY 1, 1987

"I, Jimmy Methax solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Council to the best of my skill and judgments.

Jimmy Methax  
Signature

Ronald T. Rahn  
Witness

State of W. Va.  
County of Wayne

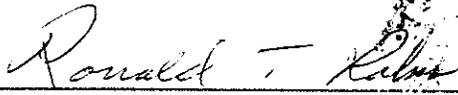
This day the 1st day of July 1987 Jimmy Methax did sign his name to the above writing in my presence.

Ronald T. Rahn  
Notary Public  
My Comm. Exp. 3-29-91

STATE OF WEST VIRGINIA,  
COUNTY OF WAYNE

Subscribed and sworn to before me this 1st day of July,  
1987.

My commission expires March 29, 1996.

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



# CITY OF KENOVA

P. O. Box 268 • KENOVA, WV 25530  
(304) 453-1571

FRANKLIN D. HECK, MAYOR  
COUNCIL: JIM YORK  
LARRY SMITH, PAUL DAVIS, JIMMY METHAX

JULY 1, 1987

"I, Paul O. Davis, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgments.

Paul O. Davis  
Signature

Ronald T. Raker  
Witness

State of W. Va.  
County of Wayne

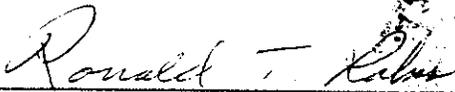
This date the 1st day of July 1987 Paul O. Davis did sign his name to the above writing in my presence.

Ronald T. Raker  
Notary Public  
My Comm exp 3-29-86

STATE OF WEST VIRGINIA,  
COUNTY OF WAYNE

Subscribed and sworn to before me this 1st day of July,  
1987.

My commission expires March 29, 1996.

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



"I, Sheila A Wheeler, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of City Clerk to the best of my skill and judgments.

Sheila A Wheeler  
Signature

8/5/91  
Date

Wanda J. Wallin  
Witness

State of W. Va.  
County of Wayne

This day the 5<sup>th</sup> day of August 1991, Sheila A. Wheeler did sign her name to the above writing in my presence.

Ronald T. Rahn  
Notary Public  
My Comm. Exp. 3-29-96

STATE OF WEST VIRGINIA,  
COUNTY OF WAYNE

Subscribed and sworn to before me this 5th day of August,  
1991.

My commission expires March 29, 1996.

  
Ronald - Reba  
Notary Public



Councilmen - Paul Davis, Terry Parsons, Jimmy Methax, Carroll Linville, Larry Smith

"I, Tom Wilson, solemnly swear (or affirm) that I will support the constitution of the Untied States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgements.

Tom Wilson  
Signature

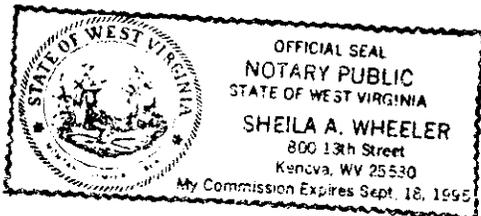
Paul O. Davis  
Witness

7/20/89

Taken and subscribed before me this 20th. day of July 1989.

Sheila A. Wheeler, Notary, My commission expires 9/18/95.

Sheila A. Wheeler



Councilmen - Paul Davis, Terry Parsons, Jimmy Methax, Carroll Linville, Larry Smith

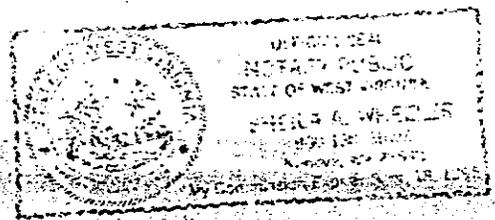
8/14/89

"I, Ron Lester, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgements.

*[Handwritten Signature]*  
Signature

Sheila A Wheeler  
Witness

Subscribed and sworn to me this 14th day of August 14, 1989



*Sheila A Wheeler*  
Notary

"I, Larry E. Smith, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Mayor to the best of my skill and judgments.

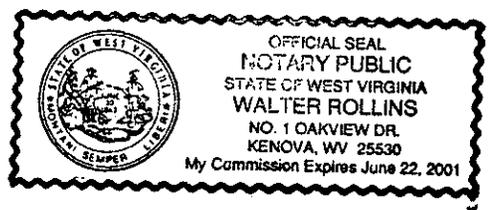
Larry E. Smith  
Signature  
6-22-91  
Date

Shirley Wheeler  
Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins  
Walter Rollins



RECORDED 112  
BOOK/PAGE - / -  
WAYNE COUNTY COMMISSION  
DATE/TIME RECORDED: 07/17/1991 13:40:05:00  
INST #: 3890 TYPE: OATH 0  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

JUL 17 1991

Robert E. Pasley Clerk  
By Shirley A. Osburn Deputy

"I, Ron Lester, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgments.

[Handwritten Signature]  
Signature

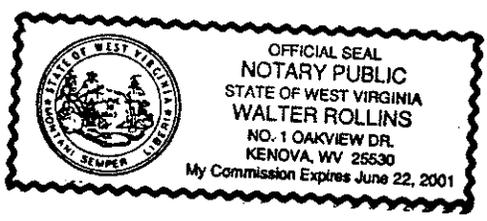
6-22-91  
Date

Sheila Wheeler  
Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins  
Walter Rollins



RECORDED  
BOOK/PAGE : - / - 02  
WAYNE COUNTY COMMISSION  
DATE/TIME RECORDED: 07/17/1991 13:43:57:00  
INST #: 3894 TYPE: OATH 0  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

Robert E. Pasley Clerk

JUL 17 1991

By Sheila A. Osburn Deputy

"I, Jim Spry, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgments.

Jim Spry  
Signature

6-22-91  
Date

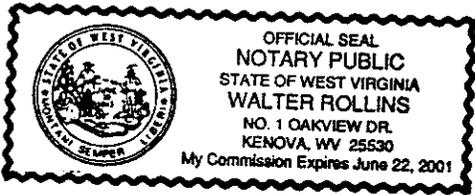
Shirley A. Wheeler

Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins  
Walter Rollins



RECORDED  
BOOK/PAGE : - / - 02  
WAYNE COUNTY COMMISSION  
DTE/TIME RECORDED: 07/17/1991 13:42:03:00  
INST #: 3892 TYPE: OATH 0  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

JUL 17 1991

Robert E. Pasley

.....Clerk

By Shirley A. Wheeler

.....Deputy

"I, PAUL E. HUTCHISON, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Council President to the best of my skill and judgments.

Paul E. Hutchison  
Signature

6-22-91

Date

Sheila Wheeler

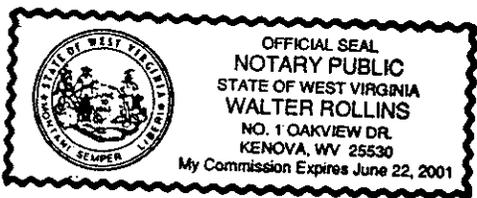
Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins

Walter Rollins



BOOK 1  
PAGE 3/3

RECORDED  
BOOK/PAGE : - / -  
WAYNE COUNTY COMMISSION  
DTE/TIME RECORDED: 07/17/1991 13:41:09:00  
INST #: 3891 TYPE: OATH O  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUES: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

Robert E. Pasley

Clerk

... 17 1991

"I, William R. Rick Chaffin, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilman to the best of my skill and judgments.

William R. Chaffin  
Signature

JUNE 22, 1991  
Date

Sheila A. Wheeler

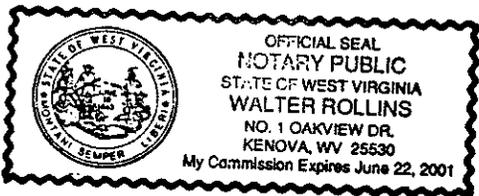
Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins  
Walter Rollins

BOOK 1  
PAGE 317



RECORDED 02  
BOOK/PAGE : - / -  
WAYNE COUNTY COMMISSION  
DATE/TIME RECORDED: 07/17/1991 13:45:00:00  
INST #: 3895 TYPE: OATH 0  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUES: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

JUL 17 1991

Robert E. Pasley Clerk  
By Sheila A. Wheeler Deputy

"I, Mary Linville, solemnly swear (or affirm) that I will support the constitution of the United States of America of the State of West Virginia, and that I will, in all respects, serve the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Kenova, and will faithfully discharge the duties of Councilwoman to the best of my skill and judgments.

Mary Linville  
Signature

6-22-91  
Date

Sheila A. Wheeler

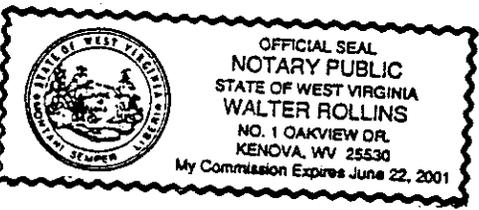
Witness

June 22, 1991

Subscribed and sworn to before me this 22nd day of June, 1991.

Walter Rollins  
Walter Rollins

BOOK 1  
PAGE 315



RECORDED : 02  
BOOK/PAGE : - / -  
WAYNE COUNTY COMMISSION  
DATE/TIME RECORDED: 07/17/1991 13:42:58:00  
INST #: 3893 TYPE: OATH 0  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: 1.50 .00

WEST VIRGINIA, WAYNE COUNTY CLERK'S OFFICE

This instrument was this day presented in my office, and thereupon together with the certificate thereto annexed, is admitted to record.

Robert E. Pasley

Clerk

JUL 17 1991

By Sheila A. Wheeler

Notary

1

2

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

20

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



PETITION

The Sanitary Board of The City of Kenova hereby petitions the City Council of The City of Kenova to enact an ordinance directing that revenue bonds and (if deemed necessary by City Council) interim construction notes of the municipality be issued pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed \$700,000 and such notes to be in an amount not to exceed \$500,000 for the purpose of acquisition and construction of sewerage system additions, betterments and improvements.

Directed this 16th day of May, 1991.

SANITARY BOARD OF THE CITY OF KENOVA

By Franklin D. Seck  
Chairman - Kenova Sanitary Board

05/15/91  
KENS.B.12  
47214/91002

The Sanitary Board ratified this petition on May 23, 1991.

Dated: August 9, 1991

SANITARY BOARD OF THE CITY OF KENOVA

By   
Chairman - Kenova Sanitary Board

08/07/91  
KENSJ.FF2  
47214/91002



# AFFIDAVIT OF PUBLICATION

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

I, Dianna Webb being first duly sworn, depose and say that I am Legal Clerk for Huntington Publishing Company, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for and on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-815 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 24th day of May, 1991, and ending with the issue of the 31st day of May, 1991, and was posted at the East Door of Cabell Co. Courthouse

on the 24th day of May, 1991; that said legal advertisement was published on the following dates: May 24, 31, 1991

; that the cost of publishing said annexed advertisement as aforesaid was \$98.05; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and \_\_\_\_\_

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

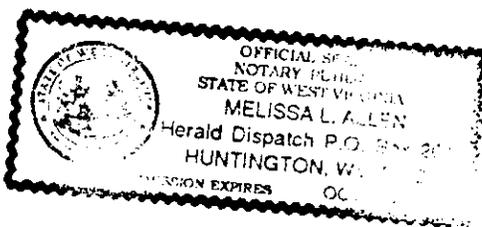
*Dianna Webb*

Taken, subscribed and sworn to before me in my said county this 31st day of May, 1991

My commission expires October 24, 2000

*Melissa L. Allen*

Notary Public  
Cabell County,  
West Virginia



A public hearing will be held on the following entitled Ordinance at a special meeting of the Council of the City of Kenova to be held on June 4, 1991, at 7:30 p.m. in the Council chambers at the Kenova City Hall, and at such hearing any person interested may appear before the City Council and present protests and all objections and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS, AND IMPROVEMENTS FOR THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF KENOVA AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUES BONDS, SERIES 1991A, NOT MORE THAN \$100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1991B, AND NOT MORE THAN \$500,000 IN TERM CONSTRUCTION FINANCING, CONSISTING OF BOND ANTICIPATION NOTES, GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND AUTHORIZING OR RATIFYING AND CONFIRMING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was adopted by the Council of the City of Kenova on May 23, 1991.

The above-quoted title of the Ordinance described generally the contents thereof and the purposes of the Bond and Note issues contemplated thereby. The City of Kenova contemplates the issuance of the Bonds and Notes described in the Ordinance. The proceeds of the Bonds will be used to provide financing of a portion of the costs of acquisition and construction of certain additions, betterments and improvements for the existing sewerage system of the City, consisting generally of approximately 7,775 linear feet of 16-inch force main, 70 linear feet of 20-inch steel casing pipe, renovations to an existing lift station, a new lift station, two diversion manholes and two mounted generators, together with all appurtenant facilities of the City of Kenova (the "Project") not otherwise provided for. The Bonds will be payable solely from revenue to be derived from the ownership and operation of the sewerage system of the City. Proceeds of the Notes will be used to provide temporary financing of a portion of such costs. The Notes will be payable solely from grant receipts, bonds proceeds, certain letter of credit proceeds or revenues of such sewerage system. No taxes may at any time be levied for the payment of the Bonds or the Notes or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the City Clerk-Treasurer of the City of Kenova for review by interested parties during regular office hours.

Following said public hearing, the City Council intends to enact said Ordinance upon final reading.

Dated: May 23, 1991.  
S/S FRANKLIN D. HECK  
Mayor



SEWER RATES  
ARTICLE 905.04

905.04 SEWER RATES SCHEDULE

(a). AVAILABLE FOR ALL GENERAL, DOMESTIC, COMMERCIAL,  
INDUSTRIAL AND PUBLIC AUTHORITY SERVICE

(b). RATES ARE BASED ON WATER USAGE.

RATE.

\$1.90 per each 1,000 gallons of water used.

This ordinance will take effect 7/1/91.

BY COUNCIL

4-18-91

First reading

5-7-91

Second reading

Effective May 14, 1991.

Garry Smith  
Mayor

Sheila Wheeler  
City Clerk-Treasurer



COPY

# AFFIDAVIT OF PUBLICATION

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

**NOTICE**  
City of Kanova will have public meeting and second reading on the following ordinance, May 7, 1991, Kanova City Hall 7:00 P.M. everyone is urged to attend.

**SEWER RATES**  
ARTICLE 905.04  
905.04. Sewer Rates Schedules  
(a). Available for all General, Domestic, Commercial, Industrial and Public Authority Service  
(b). Rates are based on Water Usage.  
RATE: \$1.90 per each 1,000 gallons of water used.  
This ordinance will take effect 7/01/91  
By Council  
First Reading 4-19-91  
LH-645 4-22,29,91

I, Dianna Webb being first duly sworn, depose and say that I am Legal Clerk for Huntington Publishing Company, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for and on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-645 was duly published in

The Herald-Dispatch  
Two-Times

~~one time once a week for xxx successive weeks~~ commencing with its issue of the 23rd day of April, 1991, and ending with the issue of the 29th day of April, 1991, and was posted at the East Door of Cabell Co. Courthouse

on the 23rd day of April, 1991; that said legal advertisement was published on the following dates: April 23, 29, 1991

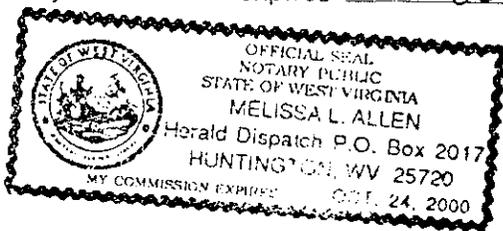
; that the cost of publishing said annexed advertisement as aforesaid was \$16.01; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and \_\_\_\_\_

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Dianna Webb

Taken, subscribed and sworn to before me in my said county this 29th day of April, 1991

My commission expires October 24, 2000



Melissa L. Allen

Notary Public  
Cabell County,  
West Virginia



SPECIAL COUNCIL MEETING  
APRIL 16, 1991

PURPOSE OF MEETING TO ADOPT LEVY.  
COUNCIL PRESENT Paul Davis, Terry Parsons, Ron Lester.

Motion made by Terry seconded by Ron to adopt levy as follows.

	Current Expense	Excell Levy	
Class I Property	Class I Rate	Class I Rate	
	12.5	5.02	
2,000,740	2,501	1,004	
220,800	276	111	
2221,540	2,777	1,115	
CLASS II Property	Class II Rate 25	Class II Rate 10.04	
4,795,313	11,988	4,815	
428,442	1,071	430	
5,223,755	13,059	5,245	
Class IV Property	Class IV Rate 50	Class IV Rate 20.08	
6,030,006	30,150	12,108	
13,566,625	67,833	27,242	
5,167,600	25,838	10,377	
24,764,231	123,821	49,727	
<u>32,209,526</u>	<u>139,657</u>	<u>56,087</u>	
Less Uncollectables 9%	12,569	5,048	
Less Tax Discounts 2%	2,542	1,021	
Less Assessors Valuation 2%	2,404		
Net Amount to be R ised by Levy	122,142	50,018	
Unencumbered Balance	40,000-	Office Of Mayor	9,609
Ad Valorem Taxes	172,160	Members of Council	10,175
Prior Year Taxes	2,732	City Clerk	46,729
Supplemental Taxes	4,300	Police Judge	24,817
Tax Penalties	500	City Attorney	12,000
Building Permit Fees	4,000	Cu stodial	8,306
Special Assessment	1,825	Election	2,500
B & O Tax	225,000	City Hall	46,325
Utilities Tax	65,000	Civic Center	5,400
Liquor Club Fee	250	Police Dept.	233,154
Licenses	4,000	Jail	1,200
Court Costs, Fees	50,000	Fire Dept.	121,180
Garbage & Trash Fees	173,000	Garbage Dept.	174,802
Charges to Other Entities	2,000	Barks	5,000
Municipal Service Fees	58,000	Library	1,800
Franchise Agreement	14,080	Streets	25,000
Miscellaneous Revenue	11,000	Regional Authority	850
Total General Fund	787,847	Beautification Comm.	2,000
Coal Severance Fund		Street Lights	17,000
Coal Severance Tax	5,000	TOTAL EXPENDITURES	747,847

Coal Sev. 5,000

Meeting adjourned.

*Sheila A. Wheeler*  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

REGULAR COUNCIL MEETING  
APRIL 18, 1991

Meeting called to order by Council President, Paul Davis, Pledge to flag said by all.

Roll Call  
Paul Davis Present  
Terry Parsons Absent  
Jimmy Methax Absent  
Tom Wilson Present  
Ron Lester Present

Minutes from previous meetings read and were approved as read.

Tom moved to approve second reading of water Ordinances seconded by Ron. All Ayes.  
AN ORDINANCE AUTHORIZING THE IMPOSITION OF A SURCHARGE PURSUANT TO WEST VIRGINIA CODE 24-2-4b CONCERNING RATE CHANGES OF MUNICIPAL OPERATED WATER UTILITIES. THIS ORGINANCE ENACTED AND ADOPTED IN THE CAPS BY THE CITY COUNSEL OF THE CITY OF KENOVA, WEST VIRGNINA, THAT:

A surcharge of \$.21 per thousand gallons of water shall be implemented upon passage of this ordinance and remain in effect through the 1st day of June 1992.

Council is asking Mayor to appoint someone to do a survey of all residents from 17th to 20th and Chestnut on widening of the streets.

Police is to check on American Commercial Terminal and ask them to meet with council.

Resolution made by Ron seconded by Tom to have first reading on Sewer Rates ordinance.

SEWER RATES SCHEDULE

(a) AVAILABLE FOR ALL GENERAL, DOMESTIC, COMMERCIAL, INDUSTRIAL AND PUBLIC AUTHORITY SERVICE.

(b) RATES ARE BASED ON WATER USAGE.

RATE. \$1.90 PER EACH 1,000 GALLONS OF WATER USED.

Public meeting and second reading will be April 30, 1991, 7:30 PM.

Ron asked about speed bumps at Va. Point, Leroy Campbell said he had talked to Topper Spry and this was a state road and they would put in speed bumps.

Pool board presented needs to council asking that city pay outstanding debts and allow \$2,000 for opening expenses. They were hoping to get by as cheap as possible. Resolution made by Ron seconded by Tom to give pool board complete authority over the daily operation of the Dreamland Pool facilities without interference from Council.

Paul announced that they would meet Tuesday, 7:30 P.M. to discuss water contract with employees.

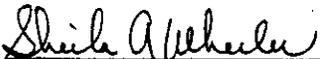
Letter was presented from Carolyn Lambert asking that no trucks signs be posted on Chestnut from 17 to 21st. Motion made by Tom seconded by Ron to pass this. All ayes.

Motion made by Tom seconded by Ron to use voting machines at General Election in June. All Ayes.

Motion made by Ron to pay bills seconded by Tom. All ayes.

Steve Jordan expressed interest in the Historical Committee. Motion made by Ron seconded by Tom to appoint Steve Jordan chairman of this committee and give him authority to select his committee. All ayes.

Meeting adjourned.

  
CITY CLERK

\_\_\_\_\_  
President

\_\_\_\_\_  
MAYOR

SPECIAL COUNCIL MEETING  
MAY 7, 1991

Meeting called to order by Council President, Paul Davis.

Council present, Paul, Terry Parsons and Ron Lester.

Purpose of meeting sewer project.

Terry moved to approve second reading on An ordinance on Sewer Rates, seconded by Ron. All ayes. This is final reading rates will be effective July 1, 1991.

Terry moved to adopt ordinance on Sewer Board, members are Mayor, George McClennon and Ted Rakes, seconded by Ron. Second reading to be 5/16/91. George McClennon term will be 5/7/91 until 5/7/93 and Ted Rakes term will be 5/7/91 until 5/7/94. All ayes.

Meeting adjourned.

  
CITY CLERK

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
MAYOR



REGULAR COUNCIL MEETING  
MAY 16, 1991

Meeting called to order by Council President, Paul Davis, pledge to flag said.

Roll Call:  
Paul Davis Present  
Terry Parsons Present  
Jimmy Methax Absent  
Tom Wilson Present  
Ron Lester Present

Minutes from previous meetings read and approved as read.

Motion made by Terry seconded by Tom to adopt CITY "SUNSHINE LAW" REGULATIONS.

"Pursuant to Section 3, Article 9A chapter 6 of the W. V. Code, the Council of the City of Kenova does hereby adopt the following rules to make available, in advance, the time and place of all regularly scheduled meetings of the Council, and the time, place and purpose of all special meetings of the Council to the public and news media:

1. A Notice shall be posted by the Clerk at the front door of the City Hall stating the time and place fixed and entered of record by Council for the holding of regularly scheduled meetings. If a particular regularly scheduled meeting is cancelled, a notice of such cancellation shall be posted at the front door of the City Hall.

2. A notice shall be posted by the Clerk the front door of the City Hall at least two days before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front door of the City Hall. Motion carried.

Motion made by Terry seconded by Tom to have second reading on establishing of sewer board. Members were sworn in by Steve Jordan. All ayes.

Tri-State Transit Authority has asked for special parking space on 20th and Chestnut. Paul asked that the Chief of Police check on this.

Steve Jordan read ordinance on Historical Society Commission, Motion made by Tom seconded by Ron to accept first reading on this ordinance. Second reading will be May 24, 1991 7:00 P.M. All ayes.

Walter Williams from Steptoe & Johnson presented petition to council for bond ordinances. The Sanitary Board of The City of Kenova hereby petitions the City Council of The City of Kenova to enact an ordinance directing that revenue bonds and (if deemed necessary by City Council) interim construction notes of the municipality be issued pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed \$700,000 and such notes to be in an amount not to exceed 500,000 for the purpose of acquisition and construction of sewerage system additions, betterments and improvements. Motion made by Terry seconded by Ron to adopt ordinance. Second reading will be May 23, 1991 7:30 pm and Public meeting and final reading will be June 6, 1991 7:30 P.M. All ayes.

Mayor asked for pool board to reconsider giving employees family passes. Julian Berry will check on this.

Paul reported that the police contacts for the month of March were 345 and April 420.

Tom made motion to do away with the survey on Chestnut St. as a petition was submitted with 79 signature asking that the streets not be widened. seconded by Ron. All ayes.

Dallas Gray from Coal Network Inc. explained that they were ready to start building and explained their facility and said they had no plans to truck coal into the facility.

Paul ask that the city pay  $\frac{1}{2}$  the cost for 2 police officersto attend a training class on cults, mayor said he felt this was a good training.

Paul explained that an ambulance service was needed for the city and this program could pay for itself. Mayor will look into this.

Ron asked that the railroad be notified to see if the tracks could be repaired. Mayor will call them.

Mr. Phelin asked that the roads be put back to one way from 17th to 21st. Terry explained council position on this. After much discussion motion made by Tom seconded by Ron to install a four way stop at the intersection of 18th and Chestnut.

Motion made by Ron seconded by Tom to pay bills when money available. All ayes.

Meeting adjourned.

*Sheila A. Wheeler*  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

26

SPECIAL MEETING  
MAY 23, 1991

Meeting called to order by Council President, Paul Davis

Council present, Paul, Terry Parsons and Ron Lester.

Paul explained purpose of meeting to have second reading on bond ordinances.  
Motion made by Terry seconded by Ron to adopt ordinances. All ayes.  
Council confirmed a petition to provide for the issuance of Sewer Revenue Bonds.  
Meeting adjourned.

Sepcial meeting

Motion made by Terry seconded by Ron to adopt ordinance on Historical Committee.  
All ayes.

Meeting adjourned.

Shirley A. Wheeler  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

SPECIAL MEETING  
JUNE 3, 1991

Meeting called to order by Council President, Paul Davis

Paul explained that this was an emergency meeting to declare a vacancy on council due to the death of Jimmy Methax on May 29, 1991.

Council present, Paul, Tom Wilson and Ron Lester.

Meeting adjourned.

Shirley A. Wheeler  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

JUNE 6, 1991  
SPECIAL MEETING

Meeting called to order by Paul Davis, Council President

Council Present Paul, Ron Lester, Tom Wilson

Paul explained purpose of meeting to have public meeting and final reading on bond ordinances.  
Motion made by Ron seconded by Tom to adopt bond ordinances. All ayes.

No public present.

Meeting adjourned.

Shirley A. Wheeler  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

JUNE 10, 1991  
SPECIAL MEETING

PURPOSE OF MEETING TO CANVASS BALLOTS

Meeting called to order by Council President, Paul Davis  
Council present, Paul, Ron Lester and Tom Wilson

Machines were checked and found 2 additional votes for Mary Linville.  
Motion made by Tom seconded by Ron to count only challenged ballots of people listed in poll books. A total of 2 ballots were counted. The final count was as follows.

Special Council Meeting  
August 2, 1991

Meeting called to order by Council President, Paul Hutchison,

Purpose of meeting to discuss sewer project and water departments.

Council present, Paul Hutchison, Jim Spry, Rick Chaffin, Ron Lester and Mary Linville

Walter Williams from Steptoe & Johnson explained bond ordinance and payments for the project. Gene Weekly from Kelley, Gidley & Blair explained how the project was progressing and said bids would be given out next week.

Mayor, city clerk and attorney are to go to the Wv Water Authority August 8 to sign for money.

Motion made by Mary Linville seconded by Ron Lester to adopt the following resolution

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1991 A AND 1991B OF THE CITY OF KENOVA: AUTHORIZING AND APPROVING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO THE SERIES 1991 A BONDS AND SERIES 1991B BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY: DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK: AND MAKING OTHER PROVISIONS AS TO THE BONDS. All ayes.

Motion made by Ron seconded by Mary to go into executive session to discuss water department. Time 8:10 P.M. 8:20 Council returned motion made by Ron seconded by Mary to adjourn. All ayes.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor



# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

UNION NATIONAL CENTER EAST

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

FACSIMILE (304) 624-8183

(304) 624-8000

WRITER'S DIRECT DIAL NUMBER

August 22, 1991

The City of Kenova  
Sewer Revenue Bonds

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service  
Internal Revenue Service Center  
Philadelphia, Pennsylvania 19255

Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned bonds. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

*Step toe & Johnson  
by Heather Williams*

STEPTOE & JOHNSON

### Enclosures

Copy of letter with enclosures to:  
Samme L. Gee, Esquire  
George B. Morrone, III, Esquire  
The Honorable Larry E. Smith

08/22/91  
8038.LTR  
47214/91002

27

715 CHARLESTON NATIONAL PLAZA  
P. O. BOX 1588  
CHARLESTON, W. VA. 25326-1588  
(304) 353-8000  
FACSIMILE (304) 353-8180

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

126 EAST BURKE STREET  
MARTINSBURG, W. VA. 25401-4399  
(304) 263-6991  
FACSIMILE (304) 263-4785

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

THE BRYAN CENTRE  
82 WEST WASHINGTON STREET, SUITE 401  
HAGERSTOWN, MARYLAND 21740-4804  
(301) 791-6620  
FACSIMILE (301) 739-3948

**Information Return for Tax-Exempt Governmental Obligations**

Under Section 149(e)

See separate instructions

(Use Form 8038-GC if the issue price is under \$100,000)

**Part I Reporting Authority**

Check box if Amended Return

1 Issuer's name  
The City of Kenova

2 Issuer's employer identification number  
55-6000190-001

3 Number and street  
City Hall, P. O. Box 268

4 Report number  
G19 91 - 1

5 City or town, state, and ZIP code  
Kenova, West Virginia 25530

6 Date of issue  
8/9/91

7 Name of issue  
The City of Kenova Sewer Revenue Bonds, Series 1991A

8 CUSIP Number  
N/A

**Part II Type of Issue (check box(es) that applies and enter the Issue Price)**

9 Check box if obligations are tax or other revenue anticipation bonds

10 Check box if obligations are in the form of a lease or installment sale

11  Education

12  Health and hospital

13  Transportation

14  Public safety

15  Environment (including sewage bonds) See Statement 1

16  Housing

17  Utilities

18  Other. Describe (see instructions)

Issue price  
\$508,101

**Part III Description of Obligations**

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity	10/1/2029	8.10 %	\$40,154	\$40,154			
20 Entire issue			\$508,101	\$508,101	27.88 years	%	8.10 %

**Part IV Uses of Original Proceeds of Bond Issues (including underwriters' discount)**

21 Proceeds used for accrued interest	21	-0-
22 Issue price of entire issue (enter line 20c)	22	\$508,101
23 Proceeds used for bond issuance costs (including underwriters' discount)	23	\$11,482
24 Proceeds used for credit enhancement	24	-0-
25 Proceeds allocated to reasonably required reserve or replacement fund	25	-0-
26 Proceeds used to refund prior issues	26	-0-
27 Total (add lines 23, 24, 25, and 26)	27	\$11,482
28 Nonrefunding proceeds of the issue (subtract line 27 from line 22 and enter amount here)	28	\$496,619

**Part V Description of Refunded Bonds (complete this part only for refunding bonds)** N/A

29 Enter the remaining weighted average maturity of the bonds to be refunded  years

30 Enter the last date on which the refunded bonds will be called

31 Enter the date(s) the refunded bonds were issued

**Part VI Miscellaneous**

32 Enter the amount of the state volume cap allocated to the issue  -0-

33 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception)  -0-

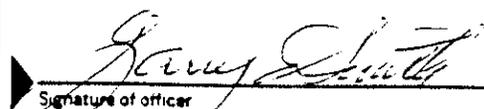
34 Pooled financings:

a Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units  -0-

b Check box if this issue is a loan made from the proceeds of another tax-exempt issue  and enter the name of the issuer  West Virginia Water Development Authority and the date of the issue  July 11, 1990

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief they are true, correct, and complete.

Please Sign Here

  
Signature of officer

August 9, 1991  
Date

Larry E. Smith, Mayor  
Type or print name and title

STATEMENT 1

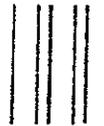
The Issuer concurrently issued supplemental sewage bonds which bear no interest with an issue price of \$22,941, which are junior and subordinate to the bonds set forth on the Form 8038-G to which this statement is attached, but which, for purposes of Form 8038-G, may be considered as part of the same issue although separate obligations. Such supplemental sewage bonds are named The City of Kenova Sewer Revenue Bonds, Series 1991B, have no Cusip Number and finally mature on October 1, 2029, with a final maturity issue price and stated redemption price at maturity of \$604. The entire issue of such supplemental sewage bonds has an issue price and stated redemption price at maturity of \$22,941, with a weighted average maturity of 19.65 years. \$518 of the original proceeds of such supplemental sewage bonds will be used for bond issuance costs and the balance of \$22,423 will be nonrefunding proceeds of such supplemental sewage bonds. No amount of the state volume cap will be allocated to such supplemental sewage bonds, and no amount of such supplemental sewage bonds has been designated by the Issuer under Section 265(b)(3)(B)(i)(III). None of the proceeds of such supplemental sewage bonds will be used to make loans to other governmental units, and none of such supplemental sewage bonds are a loan made from the proceeds of another tax-exempt issue.

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.  
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.

1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. <i>(Extra charge)</i>	2. <input type="checkbox"/> Restricted Delivery <i>(Extra charge)</i>
3. Article Addressed to:  INTERNAL REVENUE SERVICE INTERNAL REVENUE SERVICE CENTER PHILADELPHIA, PA 19155	4. Article Number P 020 664 478
5. Signature - Addressee X  6. Signature - Agent X  7. Date of Delivery	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
	8. Addressee's Address (ONLY if requested and fee paid)
Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .	

PS Form 3811, Mar. 1987      \* U.S.G.P.O. 1987-178-268      DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE  
OFFICIAL BUSINESS



**SENDER INSTRUCTIONS**  
 Print your name, address, and ZIP Code in the space below.

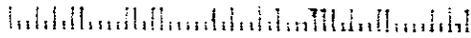
- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.  
 Walter L. Williams, Esquire  
 Steptoe & Johnson  
 \_\_\_\_\_  
 P. O. Box 2190  
 \_\_\_\_\_  
 Clarksburg, WV 26302-2190  
 \_\_\_\_\_



1

2

WV MUNICIPAL BOND COMMISSION  
 Suite 337 Building 3  
 1800 Washington St. E  
 State Capitol Complex  
 Charleston, WV 25305  
 (304) 348-3971

NEW ISSUE REPORT FORM

Date of Report: August 9, 1991

(See Reverse for Instructions)

ISSUE: THE CITY OF KENOVA, Sewer Revenue Bonds, Series 1991A

ADDRESS: City Hall, P.O.Box 268, Kenova, WV 25530

COUNTY: Wayne

PURPOSE New Money  X

OF ISSUE: Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: August 9, 1991

CLOSING DATE: August 9, 1991

ISSUE AMOUNT: \$508,101

RATE: 8.10%

1st DEBT SERVICE DUE: October 1, 1991

1st PRINCIPAL DUE: October 1, 1992

1st DEBT SERVICE AMOUNT: \$5,944.78

PAYING AGENT: One Valley Bank, National Association

**ISSUERS**

BOND COUNSEL: Steptoe & Johnson

Contact Person: Walter L. Williams, Esq.

Phone: 624-8152

CLOSING BANK: First Bank of Ceredo

Contact Person: Linda Pleasants

Phone: 453-1301

**KNOWLEDGEABLE ISSUER CONTACT**

Contact Person: Larry E. Smith or  
Sheila A. Wheeler

Position: Mayor and City Clerk-  
Treasurer, respectively

Phone: 453-3121

**UNDERWRITERS**

BOND COUNSEL: Jackson & Kelly

Contact Person: Sanne L. Gee, Esquire

Phone: 340-1318

**ESCROW TRUSTEE:**

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

**OTHER:**

Contact Person: \_\_\_\_\_

Function: \_\_\_\_\_

Phone: \_\_\_\_\_

**DEPOSITS TO MBC AT CLOSE:**

By  Wire  
 Check

Accrued Interest: \$ \_\_\_\_\_

Capitalized Interest: \$ 41,155

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

Other: \$ \_\_\_\_\_

**REFUNDS & TRANSFERS BY MBC AT CLOSE:**

By  Wire  
 Check  
 IGT

To Escrow Trustee: \$ \_\_\_\_\_

To Issuer: \$ \_\_\_\_\_

To Cons. Invest. Fund: \$ \_\_\_\_\_

To Other: \$ \_\_\_\_\_

**NOTES:**

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS

REQUIRED: \_\_\_\_\_

TRANSFERS

REQUIRED: \_\_\_\_\_

WV MUNICIPAL BOND COMMISSION  
 Suite 337 Building 3  
 1800 Washington St. E  
 State Capitol Complex  
 Charleston, WV 25305  
 (304) 348-3971

NEW ISSUE REPORT FORM

Date of Report: August 9, 1991

(See Reverse for Instructions)

ISSUE: THE CITY OF KENOVA, Sewer Revenue Bonds, Series 1991B

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

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

ISSUE DATE: August 9, 1991 CLOSING DATE: August 9, 1991

ISSUE AMOUNT: \$22,941 RATE: 0%

1st DEBT SERVICE DUE: October 1, 1992 1st PRINCIPAL DUE: October 1, 1992

1st DEBT SERVICE AMOUNT: \$603.71 PAYING AGENT: One Valley Bank, National Association

**ISSUERS**

BOND COUNSEL: Steptoe & Johnson

Contact Person: Walter L. Williams, Esq.

Phone: 624-8152

CLOSING BANK: First Bank of Ceredo

Contact Person: Linda Pleasants

Phone: 453-1301

**KNOWLEDGEABLE ISSUER CONTACT**

Contact Person: Larry E. Smith or Sheila A. Wheeler

Position: Mayor and City Clerk-Treasurer, respectively

Phone: 453-3121

**UNDERWRITERS**

BOND COUNSEL: Jackson & Kelly

Contact Person: Samme L. Gee, Esquire

Phone: 340-1318

**ESCROW TRUSTEE:**

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

**OTHER:**

Contact Person: \_\_\_\_\_

Function: \_\_\_\_\_

Phone: \_\_\_\_\_

**DEPOSITS TO MBC AT CLOSE:**

By  Wire  
 Check

Accrued Interest: \$ \_\_\_\_\_  
 Capitalized Interest: \$ \_\_\_\_\_  
 Reserve Account: \$ \_\_\_\_\_  
 Other: \$ \_\_\_\_\_

**REFUNDS & TRANSFERS BY MBC AT CLOSE:**

By  Wire  
 Check  
 IGT

To Escrow Trustee: \$ \_\_\_\_\_  
 To Issuer: \$ \_\_\_\_\_  
 To Cons. Invest. Fund: \$ \_\_\_\_\_  
 To Other: \$ \_\_\_\_\_

**NOTES:**

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS

REQUIRED: \_\_\_\_\_

TRANSFERS

REQUIRED: \_\_\_\_\_



GRU → JLD  
EMP  
TS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

RECEIVED  
OCT 12 '87

OCT 5 1987

CERTIFIED MAIL

RE: C-540272-01-0  
City of Kenova

Honorable Franklin D. Heck  
Mayor, City of Kenova  
P.O. Box 268  
Kenova, West Virginia 25530

Dear Mayor Heck:

We are pleased to inform you of the award of a Step II/III Federal grant for the preparation of construction drawings and specifications, and construction of wastewater treatment works for the referenced project, as described in your application and approved by the West Virginia Department of Natural Resources.

The grant award is for an amount not to exceed \$1,801,080. This amount includes Basic Funds of \$1,455,680 and Alternate Funds of \$345,400, and is subject to the conditions set forth in Part III of the Assistance Agreement.

Copies of the applicable Federal Regulations are forwarded for your reference.

The original and a copy of the Assistance Agreement are enclosed. The original copy of the Agreement should be signed and returned to Mrs. Catherine A. Mastropieri, Chief, Grants Management Branch, within twenty-one days of your receipt. The copy should also be signed and retained for your files.

Sincerely,

Alvin R. Morris, Director  
Water Management Division

Enclosures (2)

cc: Mr. Mike Johnson, WVDNR  
Mr. Edgar Henry, WDA  
Kelley, Gidley, Blair & Wolfe, Inc. ✓

29A

U.S. ENVIRONMENTAL PROTECTION AGENCY  
 EPA ASSISTANCE AGREEMENT/AA/EX/EX/EX  
 PART I - ASSISTANCE NOTIFICATION INFORMATION

1. STATE AND NO. C-5-0112-0-10  
 2. LOG NUMBER Three- C  
 3. DATE OF AWARD SEP 28 1987  
 4. FUNDING DATE OCT 5 1987

5. AGREEMENT TYPE  
 Operative Agreement  
 Grant Agreement  
 Assistance Amendment

6. PAYMENT METHOD  
 Advance  
 Reimbursement  
 Letter of Credit  
 Send Payment Request To: Grants Management Branch

7. TYPE OF ACTION NEW

8. RECIPIENT  
 City of Kenova  
 P.O. Box 268  
 Kenova, West Virginia 25530

9. PAYEE  
 City of Kenova  
 P.O. Box 268  
 Kenova, West Virginia 25530

EIN NO. \_\_\_\_\_ CONGRESSIONAL DISTRICT 4th

10. RECIPIENT TYPE City

11. PROJECT MANAGER AND TELEPHONE NO.  
 Frankin D. Heck, Mayor  
 (304) 453-1571

12. CONSULTANT (WWT Construction Grants Only)  
 Kelley, Gidley, Blair & Wolfe, Incorporated  
 P.O. Box 2986  
 Charleston, West Virginia 25330  
 (304) 345-0470

13. ISSUING OFFICE (City/State)  
 Philadelphia, Pennsylvania

14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO.  
 R. Fenton Roudabush, Chief  
 Virginia-West Virginia Section  
 (215) 597-9131

15. EPA CONGRESSIONAL LIAISON & TEL. NO.  
 Patricia Gaskins (202) 332-5134

16. STATE APPL ID (Clearinghouse) \_\_\_\_\_

17. FIELD OF SCIENCE N/A

18. PROJECT STEP (WWT CG Only) II/III

19. STATUTORY AUTHORITY Clean Water Act, Title II

20. REGULATORY AUTHORITY 40 CFR Parts 30 & 35

21. STEP 2 + 3 & STEP 3 (WWT Construction Only)

a. Treatment Level	I
b. Project Type	MOD
c. Treatment Process	N/A
d. Sludge Design	N/A

22. PROJECT TITLE AND DESCRIPTION Design and construction of sewage system improvements including pumping and force main facilities to transport sewage to Ceredo for subsequent transport to the wastewater treatment plant at Huntington. The eligible project includes allowable associated costs as defined in 40 CFR 35.2250 up to the amounts shown in Part II of the Assistance Agreement.

23. PROJECT LOCATION (Area Impacted by Project)

City/Place Kenova	County Wayne	State WV	Congressional District 4th
----------------------	-----------------	-------------	-------------------------------

24. ASSISTANCE PROGRAM (CFA Program No. & Title) 66.418

25. PROJECT PERIOD 09/87 - 10/90

26. BUDGET PERIOD N/A

27. COMMUNITY POPULATION (WWT CG Only) 1,810

28. TOTAL BUDGET PERIOD COST N/A

29. TOTAL PROJECT PERIOD COST 2,646,700

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
30. EPA Amount This Action		1,801,080	
31. EPA In-Kind Amount			
32. Unexpended Prior Year Balance			
33. Other Federal Funds			
34. Recipient Contribution			
35. State Contribution			
36. Local Contribution			
37. Other Contribution			
38. Allowable Project Cost		2,646,700	

Program Element GSAW80 80	FY 87 87	Appropriation 68X0103.K 68X0103.K	Doc. Control No. W87008 WA8711	Account Number 7GSA036006 7GSD036006	Op Class 41.11 41.11	Comptroller's Disburse. Amount \$1,455,680 \$ 345,400
---------------------------------	----------------	---	--------------------------------------	--	----------------------------	---

TABLE A - OBJECT CLASS CATEGORY  
(Non-construction)

TOTAL APPROVED ASSISTANCE  
BUDGET PERIOD (USD)

1. PERSONNEL	
2. FRINGE BENEFITS	
3. TRAVEL	
4. EQUIPMENT	
5. SUPPLIES	
6. CONTRACTUAL	
7. CONSTRUCTION	
8. OTHER	
9. TOTAL DIRECT CHARGES	
10. INDIRECT COSTS RATE _____% BASE	
11. TOTAL (Share: Recipient _____% Federal _____%)	
12. TOTAL APPROVED ASSISTANCE AMOUNT	\$ N/A

TABLE B - PROGRAM ELEMENT CLASSIFICATION  
(Non-construction)

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12. TOTAL (Share: Recipient _____% Federal _____%)	0.6525 1.0
13. TOTAL APPROVED ASSISTANCE AMOUNT	\$ N/A

TABLE C - PROGRAM ELEMENT CLASSIFICATION  
(Construction)

Alternative (20%)      Basic (55%)

1. ADMINISTRATION EXPENSE		
2. PRELIMINARY EXPENSE	10,440	16,000
3. LAND STRUCTURES, RIGHT-OF-WAY		
4. ARCHITECTURAL ENGINEERING BASIC FEES		
5. OTHER ARCHITECTURAL ENGINEERING FEES	36,460	55,877
6. PROJECT INSPECTION FEES	48,603	74,488
7. LAND DEVELOPMENT	67,923	104,097
8. RELOCATION EXPENSES		
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES		
10. DEMOLITION AND REMOVAL		
11. CONSTRUCTION AND PROJECT IMPROVEMENT		
12. EQUIPMENT	1,310,000	2,007,525
13. <del>PRELIMINARY</del> Planning and Design Allowance	122,656	187,978
14. TOTAL (Lines 1 thru 13)		
15. ESTIMATED INCOME (If applicable)		
16. NET PROJECT AMOUNT (Line 14 minus 15)		
17. LESS: INELIGIBLE EXCLUSIONS		
18. ADD: CONTINGENCIES		
19. TOTAL (Share: Recipient <u>32.0%</u> Federal <u>68.0%</u> )	130,918	200,735
20. TOTAL APPROVED ASSISTANCE AMOUNT (combined)	1,727,000	2,646,700
21. TOTAL APPROVED ASSISTANCE AMOUNT	\$ 345,400	1,455,680

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

*(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)*

The grantee is subject to all the requirements of 40 CFR Part 35, Subpart I, Part 30, Part 33 and other pertinent regulations. The grantee is directed to certain following special considerations of those requirements.

1. Regulations Affecting Federal Grant Payments

(a) Payments shall not be made for Step III professional services until the grantee complies with the procurement requirements of 40 CFR Part 33, Subpart A.

(b) Payments shall be made in accordance with 40 CFR 35.2300.

2. Project Schedule

EPA's policy requires that projects be initiated, constructed, and placed in operation in a timely manner. For that reason, the schedule shown below, which was developed in conjunction with your grant application, is included as a special condition. The grantee is expected to take all appropriate actions to ensure that this schedule is maintained.

In the event that the project is delayed for reasons beyond the control of the grantee, this schedule may be revised. If the delay arises from mismanagement and could otherwise have been avoided, the schedule will not be revised, in which case EPA will be compelled to determine if ineligible incremental costs have been incurred as a result.

3. Project Initiation (40 CFR 35.2212)

Construction is expected to be initiated on the following schedule.

Failure of the grantee to initiate construction of all major contracts within 12 months of approval of plans and specifications will result in disallowance of incremental costs in accordance with 40 CFR 35.2212, "Project Initiation".

	<u>Date</u>		
Plans and Specifications approval	<u>04/88</u>	_____	_____
Bid Advertisement	<u>05/88</u>	_____	_____
Construction Contract Award	<u>08/88</u>	_____	_____
Construction Start (NTP)	<u>09/88</u>	_____	_____

4. Grant Payment Milestones (40 CFR 35.2206)

Grant payments cannot exceed 50% of the Federal share unless the grantee has furnished a satisfactory final plan of operation, and cannot exceed 90% unless the grantee has furnished a satisfactory Operations and Maintenance Manual. The following dates represent an estimate of the timing of those payments.

Final Plan of Operation Approval	<u>03/89</u>
Operation and Maintenance Manual Approval	<u>09/89</u>

5. Sewer Use Ordinance and User Charge System (40 CFR 35.2208)

The sewer use ordinance must be adopted, and the user charge system implemented, before the system is placed in operation. The following dates represent an estimate of that operational date.

Sewer Use Ordinance Adoption	<u>01/88</u>
User Charge System Implementation	<u>01/88</u>

6. Notice of Building Completion (40 CFR 35.2216)

Grantee agrees to notify the State when construction is completed and also agrees to submit a preliminary final payment request on schedule.

Grantee's request to State for final physical inspection	<u>09/89</u>
Preliminary Final Payment Request	<u>09/89</u>

7. Project Performance (40 CFR 35.2218)

Federal Regulations place special emphasis on the performance of the project. It is vitally important that the facility performs as designed and on schedule. The grantee, therefore, agrees to initiate operation and certify performance by the dates below. It is likewise important that the final Federal share of the project be determined at the earliest possible date. The grantee, therefore, agrees to submit its request for final payment in accordance with this schedule.

Initiation of Operation	<u>10/89</u>
Project Performance Certification	<u>10/90</u>
Final Payment Request	<u>10/90</u>

8. Project Replacement

The grantee shall inform the Regional Administrator within two years after the initiation of the operation of the project if the project is failing to meet the project performance standards. If necessary the Regional Administrator may award 100% of the allowable costs for modifications or replacement (40 CFR 35.2032(c)).

9. Subagreements and Contracts

- (a) The grantee agrees to negotiate a subagreement and contract for all services to be awarded under this grant. Such subagreements and contracts shall be in conformance with and incorporate the required clauses of 40 CFR Part 33.
- (b) A copy of the proposed subagreements and contracts shall be submitted to the Regional Administrator for review and pre-award approval as appropriate under 40 CFR Part 33. The submittal of the proposed subagreements and contracts shall include the procurement records required in Appendix A to 40 CFR Part 33.
- (c) The grantee shall submit to the Regional Administrator the proposed subagreement and contract cost or price data on EPA Form 5700-41 or on a form which contains similar information.

10. Flood Insurance

The grantee agrees to acquire and maintain at his own cost any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended. This condition shall not be applicable if, on the date of execution of this Grant Agreement by both parties, flood insurance was not available pursuant to the Flood Insurance Act of 1968, as amended, for property in the project location.

11. Land Acquisition

The grantee shall not make any offer to acquire allowable real property until the Regional Administrator approves the price the grantee will offer the property owner (40 CFR 35.2210).

12. Review

The grantee recognizes that approval of any part of this grant, change orders, grant increase amendments, subagreements, any specific items, or eligibility of any other costs will be subject to final review, including project officer review, audit review, and final determination of the Grant Approving official.

13. Advertisement for Bids

Prior to the advertisement for construction bids, the grantee agrees to submit to the Regional Administrator for approval the following:

A draft plan of operation (40 CFR 35.2106);

An executed intermunicipal service agreement (40 CFR 35.2107);

A user charge system (40 CFR 35.2140); and

Final design drawings and specifications (40 CFR 35.2040 (b)(5)).

14. MBE/WBE Requirements

The recipient agrees to submit to the Chief, Construction Grants Branch, attn: EEO Specialist, EPA, Region III, a completed Standard Form-334 within 30 days after the date the recipient begins building the project (see 40 CFR 35.2202). This Standard Form-334 will contain the information on subagreement awards to minority and women's businesses during the design phase of the project. The recipient agrees to submit to the Chief, Construction Grants Branch, attn: EEO Specialist, EPA, Region III, a completed Standard Form-334 within 30 days after the end of each Federal fiscal quarter during which the recipient or its contractors award any subagreements for building and building-related services and supplies.

15. Public Participation

Additional public participation is required to inform prospective users of the expected costs and rates. The grantee shall submit to the DNR project officer, within 2 months, a plan/schedule for conducting the additional public participation.

16. Audit Requirement

The recipient agrees that it will comply with the provisions of OMB Circular A-128 governing the audit of State and local government recipients of Federal assistance for fiscal years that begin after December 31, 1984. (This requirement replaces 40 CFR 30.540(b) which is based on OMB Circular A-102, Attachment P.)

17. EPA's National Municipal Policy

Nothing in this grant agreement shall be construed to excuse the grantee from meeting the requirements of the National Municipal Policy and the enforceable requirements of the Clean Water Act, as amended.

The schedule for completion of this project will be revised as needed to correspond to any schedule approved in the context of an enforcement action.

18. Eligibility Agreement

The grantee and the Environmental Protection Agency agree, pursuant to section 203(a)(2) of the Clean Water Act, that only those items specified in the project description (scope) portion of the grant agreement are eligible for Federal participation in accordance with 40 CFR Part 35.2250 (determination of allowable costs).

19. User Agreements

Within 6 months of Grant Award, a Controlling Authority (i.e. Public Service District, City, etc.) must be established for those areas outside of the corporate limits of Kenova, or individual user agreements with a minimum of 80% of the anticipated customers must be obtained or the funds allocated to these areas will be de-obligated.

PART IV

**NOTE:** The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/~~amendment~~ to the City of Kenova

for 68.0 % of all approved costs incurred up to and not exceeding \$ 1,801,080

for the support of approved budget period effort described in application (including all application modifications)

C-540272-01-0 City of Kenova

included herein by reference.

ISSUING OFFICE (Grants Administration Office)

ORGANIZATION/ADDRESS  
Environmental Protection Agency  
Grants Management Branch (3PM70)  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

AWARD APPROVAL OFFICE

ORGANIZATION/ADDRESS  
Environmental Protection Agency  
Water Management Division (3WMOO)  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL

TYPED NAME AND TITLE

*[Handwritten Signature]*

James M. Seif, Regional Administrator

SEP 28 1987

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2, the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE

TYPED NAME AND TITLE

DATE

*[Handwritten Signature: Franklin D. Heck]*

Mayor

10/20/87



STATE OF WEST VIRGINIA  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES  
DIVISION OF NATURAL RESOURCES  
WATER RESOURCES SECTION  
1201 Greenbrier Street  
Charleston, West Virginia 25311  
Telephone (304)348 2107

GASTON CAPERTON  
Governor

RF  
JUL 15 '91  
AN J. EDWARD HAMRICK III  
DIRECTOR

July 11, 1991

Honorable Franklin D. Heck  
Mayor, City of Kenova  
P. O. Box 268  
Kenova, West Virginia 25530

RE: City of Kenova  
C-540272-01

Dear Mayor Heck:

You are hereby advised that the bidding procedures for Contract 1 of the above referenced project has been reviewed and is approved. The contract may now be awarded to the low, responsive bidder, Reynolds, Incorporated, as indicated by the proposal you have submitted.

Certain construction activities have been assigned to our Engineering Section. You will be contacted by a representative of this section in the near future.

The Part B documents that you submitted are being reviewed by this office. The official approval letter and the grant amendment are currently being processed and will be forwarded under separate cover. The total eligible project cost for this phase of the project is \$849,600 and reflects an EPA grant of \$467,280.

Should you have any questions, please contact Rosalie Ortega or Ed Burdette of my staff at (304) 348-0637.

Sincerely,

CONSTRUCTION ASSISTANCE

Mike Johnson, P.E.  
Assistant Chief

MJ/roa

cc: Mr. Frederick Warren, EPA  
Mr. Lee Murphy, EPA  
Mr. Bernie Yonkosky, WDA  
Kelley, Gidley, Blair & Wolfe ✓





STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

STON CAPERTON  
GOVERNOR

September 29, 1989

The Honorable Franklin D. Heck  
Mayor  
City of Kenova  
Post Office Box 268  
Kenova, West Virginia 25530

Dear Mayor Heck:

Thank you for your application to the Small Cities Block Grant program for Fiscal Year 1989. 5

I am pleased to approve your application in the amount of \$323,000 to the City of Kenova for its wastewater system improvement project.

In order to most effectively use the limited dollars available, I hereby commit \$200,000 from our FY 1989 allocation which will be immediately available to you. The remaining \$123,000 necessary to complete this project will be evaluated and committed in the coming fiscal year. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind. My Community Development staff will contact you to complete the necessary contracts in order to proceed with your project. 6

It is with great pleasure that I am able to work with you to make this improvement a reality for the citizens of Kenova. 7

Sincerely,

*Ston Caperton*  
Ston Caperton  
Governor



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

GASTON CAPERTON  
GOVERNOR

July 16, 1990

REGION II PLANNING AND DEV. COUNCIL  
121 SOUTH AVENUE • P.O. BOX 949  
HENDERSHOT, WEST VIRGINIA 25712

JUL 18 1990

The Honorable Franklin D. Heck  
Mayor  
City of Kenova  
Post Office Box 268  
Kenova, West Virginia 25530

Dear Mayor Heck:

On September 29, 1989, the City of Kenova received a commitment of \$323,000 in Small Cities Block Grant funds for improvements to the wastewater collection system.

The SCBG award was based upon your immediate need for funds; and, therefore, only \$200,000 was made available from the FY 1989 allocation, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the City of Kenova's ability to proceed with this worthwhile community development project, I am committing the remaining \$123,000 from the FY 1990 Small Cities allocation. Your existing SCBG contract will be amended to include the additional funds.

It is with great pleasure that I am able to work with you to make this improvement a reality.

Sincerely,

*Gaston Caperton*  
Gaston Caperton  
Governor

GC:bss

cc: Region II



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

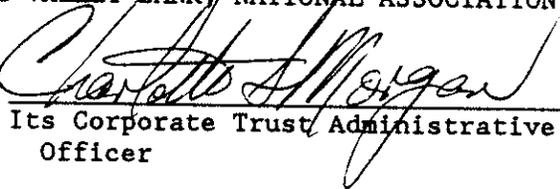
ACCEPTANCE OF DUTIES OF REGISTRAR

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association with its principal office in the City of Charleston, West Virginia, hereby accepts appointment as Registrar in connection with The City of Kenova Sewer Revenue Bonds, Series 1991A and Series 1991B, all dated August 9, 1991, in the aggregate principal amount of \$531,042 (collectively "the Bonds") and agrees to perform all duties of Registrar in connection with such Bonds, all as set forth in the Local Act authorizing issuance of the Bonds.

Dated this 9th day of August, 1991.

ONE VALLEY BANK, NATIONAL ASSOCIATION

By

  
Its Corporate Trust Administrative  
Officer

08/05/91  
KENSJ.W2  
47214/91002



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

FIRST BANK OF CEREDO, a state banking corporation, with principal office in Cerado, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond and Notes Ordinance of The City of Kenova (the "Issuer"), enacted by the Council of the Issuer on June 6, 1991, authorizing issuance of the City's Sewer Revenue Bonds, Series 1991A and Series 1991B, all dated August 9, 1991, in the aggregate principal amount of \$531,042 (collectively, the "Bonds") and agrees to perform all duties of Depository Bank in connection with such Bonds, all as set forth in said Bond and Notes Ordinance.

Dated this 9th day of August, 1991.

FIRST BANK OF CEREDO

By Linda J. Pleasants  
Its Asst Vice President

08/01/91  
KENS.B.X2  
47214/91002



THE CITY OF KENOVA

Sewer Revenue Bonds,  
Series 1991A and Series 1991B

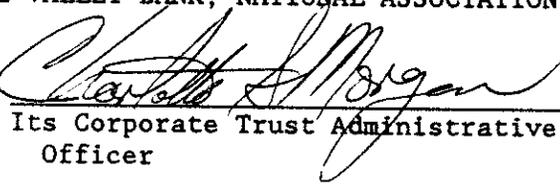
CERTIFICATE OF REGISTRATION OF BONDS

I, CHARLOTTE S. MORGAN, Corporate Trust Administrative Officer of One Valley Bank, National Association, as Registrar under the Local Act and Registrar's Agreement providing for the \$531,042 aggregate principal amount of Sewer Revenue Bonds, Series 1991A and Series 1991B, of The City of Kenova (the "Issuer"), hereby certify that on the 9th day of August, 1991, the single fully registered Series 1991A Bond of the Issuer in the principal amount of \$508,101 designated "Sewer Revenue Bond, Series 1991A," numbered AR-1, and the single fully registered Series 1991B Bond of the Issuer in the principal amount of \$22,941 designated "Sewer Revenue Bond, Series 1991B," numbered BR-1, were registered as to principal and interest (the Series 1991B Bond being registered as to principal only) in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the One Valley Bank, National Association, as Registrar.

WITNESS my signature as of this 9th day of August, 1991.

ONE VALLEY BANK, NATIONAL ASSOCIATION

By

  
Its Corporate Trust Administrative  
Officer

08/05/91  
KENSJ.Y2  
47214/91002



REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 9th day of August, 1991, by and between THE CITY OF KENOVA, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$531,042 aggregate principal amount of Sewer Revenue Bonds, Series 1991A and Series 1991B, in fully registered form (collectively, the "Bonds"), pursuant to a Bond and Notes Ordinance enacted by the Council of the Issuer June 6, 1991, and effective June 13, 1991, and a Supplemental Resolution adopted August 2, 1991 (collectively, the "Local Act");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Local Act, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Local Act provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Local Act and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Local Act and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Local Act, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as

the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Local Act with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Local Act, the terms of the Local Act shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Local Act will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER:                   The City of Kenova  
                              City Hall, P. O. Box 268  
                              Kenova, West Virginia 25530  
                              Attention: Mayor

REGISTRAR:               One Valley Bank, National Association  
                              Post Office Box 1793  
                              One Valley Square  
                              Charleston, West Virginia 25326  
                              Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Local Act.

IN WITNESS WHEREOF, THE CITY OF KENOVA and ONE VALLEY BANK, NATIONAL ASSOCIATION, have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

THE CITY OF KENOVA

By *Garry Smith*  
Its Mayor

ONE VALLEY BANK, NATIONAL ASSOCIATION

By *Charlotte Morgan*  
Its Corporate Trust Administrative  
Officer

08/07/91  
KENSJ.Z3  
47214/91002

EXHIBIT A

[Included in transcript as Document No. 1]

**Invoice**

**ONE VALLEY  
BANK**

CITY OF KENOVA, WEST VIRGINIA

DATE AUGUST 9, 1991

UNITS	ITEM DESCRIPTION	TOTAL
	<p>\$531,042 PAR CITY OF KENOVA, WV SEWER REVENUE BONDS, 1991 SERIES A &amp; SERIES B</p> <p>ONE TIME FEE FOR SERVICES AS REGISTRAR AND AUTHENTICATING AGENT.</p>	<p>\$500.00</p>

SEND REMITTANCE TO: One Valley Bank  
One Valley Square  
P.O. Box 1793  
Charleston, WV 25326

Attn: CHARLOTTE S. MORGAN



ASSIGNMENT SEPARATE FROM BOND

FOR VALUE RECEIVED, the West Virginia Water Development Authority hereby sells, assigns and transfers unto One Valley Bank, National Association, Charleston, West Virginia, the Sewer Revenue Bond, Series 1991A, of The City of Kenova in the principal amount of \$508,101, numbered AR-1, standing in the name of West Virginia Water Development Authority on the books of said Issuer.

Dated: August 9, 1991.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By Barbara B Meadows  
Authorized Representative

08/05/91  
KENSJ.AA2  
47214/91002



AD 1A-82  
Revised 5-89

STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATER RESOURCES  
1201 Greenbrier Street  
Charleston, West Virginia 25311

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

**WATER POLLUTION CONTROL PERMIT**

Permit No.	WV0035912	Issue Date:	June 10, 1991
Subject:	Sewage Collection Facilities	Effective Date:	July 10, 1991
		Expiration Date:	June 9, 1996
		Supersedes:	WV/NPDES Permit No. WV0035912 Issue Date August 30, 1985
Location:	Kenova (City)	Wayne (County)	Ohio (Drainage Basin)
Outlet	Latitude:	°	'
Sites:	Longitude:	°	'
			" N/A

To whom it may concern:

This is to certify that City of Kenova, P. O. Box 268,  
Kenova, WV 25530

is hereby granted a NPDES Water Pollution Control Permit to operate and maintain an existing wastewater collection system comprised of gravity sewer lines, manholes, cleanouts, two(2) lift stations with the necessary force mains and all requisite appurtenances.

To acquire, construct, install, operate and maintain approximately 7,535 linear feet of 16 inch diameter force main, one(1) lift station to replace the existing Ninth Street Lift Station, renovations of the existing Nineteenth Street Lift Station and all requisite appurtenances.

The facilities are to serve a population equivalent of approximately 5,000 persons in the City of Kenova and convey wastewater to the jointly owned portions of the wastewater collection system with the Town of Ceredo and Northern Wayne Public Service District to the City of Huntington wastewater treatment plant for subsequent treatment and discharge to the Ohio River at Mile Point 313.2.

This permit is subject to the following terms and conditions:

The information submitted on and with Permit Application No. WV0035912, dated the 23rd day of August 1990, and the information submitted on and with Amended Permit Application No. WV0035912, received the 19th day of September 1990, are all hereby made terms and conditions of this Permit with like effect as if all such permit application information was set forth herein, and with other conditions set forth in Sections A, B, C, D, E, F, and G.

WASTEWATER COLLECTION FACILITIES TO BE CONSTRUCTED IN ACCORDANCE  
WITH:

Plans, Specifications and Reports:

Date Approved: January 25, 1991

Prepared By: Kelley, Gidley, Blair and Wolfe, 550 Eagan  
Street, Charleston, WV 25301.

Title: City of Kenova; Wayne County, West Virginia;  
Wastewater Collection Facilities; Contract 1;  
EPA Project No. C-540272.

A. Sewer System Overflows

Outlet numbers 001 and 002 (listed below) serve as combined sewer relief points necessitated by stormwater entering the sewer system and exceeding the hydraulic capacity of the sewers and are permitted to discharge only for such reason. There are at this time no specified effluent limitations on these discharges. Each overflow event shall be monitored for cause, frequency, duration, quality and quantity of flow. This data shall be reported monthly to the Water Resources Section. The Water Resources Section shall require a plan of action to correct such occurrences if degradation of the receiving stream results.

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
001	Nineteenth Street Lift Station Latitude: 38°24'24" N Longitude: 82°34'53" W	Ohio River (Mile Point 316.1)
002	Ninth Street Lift Station Latitude: 38°24'07" N Longitude: 82°34'05" W	Ohio River (Mile Point 315.4)

**B. SCHEDULE OF COMPLIANCE**

1. The permittee shall achieve compliance with the provisions for waste treatment and the discharge limitations specified in this permit in accordance with the following schedule:

Effective date of permit.

2. Reports of compliance or noncompliance with, and progress reports on the interim and final requirements contained in the above compliance schedule, shall be submitted no later than 14 days following each schedule date.

N/A

**1. Duty to Comply**

- (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
- (b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

**2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.

**3. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

**4. Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

**5. Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.

**6. Signatory Requirements**

All applications, reports, or information submitted to the Chief shall be signed and certified as required in Series II, Section 4.6 of the West Virginia Legislative Rules of the State Water Resources Board.

**7. Transfers**

This permit is not transferable to any person, except after notice to the Chief. The Chief may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

**8. Duty to Provide Information**

The permittee shall furnish to the Chief, within a reasonable specified time, any information which the Chief may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Chief, upon request, copies of records required to be kept by this permit.

**9. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Chief, it shall promptly submit such facts or information.

**10. Inspection and Entry**

The permittee shall allow the Chief, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any locations.

**11. Permit Modification**

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 20-5A-8 of the Code of West Virginia.

**12. Water Quality**

The effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the State Water Resources Board.

**13. Outlet Markers**

A permanent marker at the establishment shall be posted in accordance with Series III, Section 9 of the West Virginia Legislative Rules promulgated pursuant to Chapter 20, Article 5A.

**14. Liabilities**

- a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
- b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- d) Nothing in C. 14. a), b) and c) shall be construed to limit or prohibit any other authority the Chief may have under the State Water Pollution Control Act, Chapter 20, Article 5A.

**1. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by State Health Department Regulations authorized under Chapter 16, Article I, Public Health Laws, Code of West Virginia, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Chief may require a more highly skilled operator.

**2. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**3. Bypass**

## a) Definitions

- (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3 c) and D.3. d) of this permit

c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

(2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in F.2. b) of this permit.

## d) Prohibition of bypass

(1) Bypass is permitted only under the following conditions, and the Chief may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(C) The permittee submitted notices as required under D.3 c) of this permit.

(2) The Chief may approve an anticipated bypass, after considering its adverse effects, if the Chief determines that it will meet the three conditions listed in D.3 d) (1) of this permit.

**4. Upset -APPLICABLE UNTIL EXISTING WASTEWATER TREATMENT PLANT IS TAKEN OUT OF SERVICE**

a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of D.4 c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance is final administrative action subject to judicial review.

c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset.
- (2) The permitted facility was at the time being properly operated.
- (3) The permittee submitted notice of the upset as required in F.2 b) of this permit.
- (4) The permittee complied with any remedial measures required under C.3 of this permit.

d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**5) Removed Substances**

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Chief, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Chief. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Chief in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

## E. MONITORING AND REPORTING

### 1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

### 2. Reporting

N/A

- a) Permittee shall submit each month ~~each quarter~~ ~~each year~~ according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s).
- b) The required DMR's should be received no later than 20 days following the end of the reporting period and be addressed to:

Chief  
Division of Water Resources  
1201 Greenbrier Street  
Charleston, WV 25311  
Attention: Municipal Branch

- c) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.
- d) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).
- e) Specify frequency of analysis for each parameter as no. analyses/specified period (e.g. "3/month is equivalent to 3 analyses performed every calendar month). If continuous, enter "Cont.". The frequency listed on format is the minimum required.

### 3. Test Procedures

Samples shall be taken, preserved and analyzed in accordance with 40 CFR Part 136, as in effect July 1, 1985 unless other test procedures have been specified elsewhere in this permit.

### 4. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information.

- a) The date, exact place, and time of sampling or measurement;
- b) The date(s) analyses were performed;
- c) The individual(s) who performed the sampling or measurement;
- d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;
- e) The analytical techniques or methods used, and
- f) The results of such analyses.

Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in E.6.

### 5. Additional Monitoring by Permittee

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated.

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

### 6. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief at any time.

### 7. Definitions

- a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
- b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- c) "Maximum daily discharge limitation" means the highest allowable daily discharge.
- d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.
- e) "Grab Sample" is an individual sample collected in less than 15 minutes.
- f) "i-s" = immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.
- g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.
- h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two (2) consecutive hours during a 24-hour day, or during the operating day if flows are of shorter duration.
- i) The "daily average fecal coliform" bacteria is the geometric average of all samples collected during the month.
- j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.
- l) "Non-contact cooling water" means the water that is contained in a leak-free system, i.e. no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

**1. Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to Series III, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 20, Article 5A.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Series III, Section 2 of the rules as they pertain to the reporting of spills and accidental discharges.

**2. Immediate Reporting**

- a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Division's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b) The following shall also be reported immediately:
  - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
  - (2) Any upset which exceeds any effluent limitation in the permit; and
  - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Chief in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous waste.
- c) The Chief may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d) Compliance with the requirements of F.2. of this section, shall not relieve a person of compliance with Series III, Section 2 of the Board's rules.

**3. Reporting Requirements**

- a) **Planned changes.** The permittee shall give notice to the Chief of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
  - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series II of the Board's rules; or
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under F.2. of this section.
- b) **Anticipated noncompliance.** The permittee shall give advance notice to the Chief of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c) In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Chief in writing as soon as they know or have reason to believe:
  - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (A) One hundred micrograms per liter (100 ug/l);
    - (B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitro phenol; and one milligram per liter (1 mg/l) for antimony;
    - (C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4. b.7 or 4.4. b.9 of Series II of the Board's rules;
    - (D) The level established by the Chief in accordance with Section 6.3.g. of Series II of the Board's rules;
  - (2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (A) Five hundred micrograms per liter (500 ug/l);
    - (B) One milligram per liter (1 mg/l) for antimony;
    - (C) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4. b.7. of Series II of the Board's rules;
    - (D) The level established by the Chief in accordance with Section 6.3.g. of Series II of the Board's rules.
  - (3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4 b.9 of Series II of the Board's rules and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
  - (4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4 b.9 of Series II of the Board's rules and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

**4. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in F.2. a).

G. OTHER REQUIREMENTS

1. The herein-described wastewater works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected one hundred (100) year flood level and operability be maintained during the twenty-five (25) year flood level.
2. The lift station facilities shall be adequately protected by fencing.
3. The permittee shall not accept any new non-domestic discharges without first obtaining approval from the Chief of the Water Resources Section as provided in Series II, Section 14 of the Legislative Rules of the State Water Resources Board.
4. If any existing non-domestic discharge causes, or is suspected of causing, interference or pass through (as defined by 40 CFR 403.3) or otherwise violates any provision of 40 CFR 403, the permittee shall notify the Chief of such violation or suspected violation.
5. If any existing non-domestic discharge is identified as being subject to a Categorical Pretreatment Standard under 40 CFR Chapter 1, Subchapter N, and the discharge is not regulated by this permit, the permittee shall notify the Chief of such identification.
6. The permittee shall continue to operate and maintain the existing wastewater treatment plant in accordance with the terms and conditions of Administrative Order No. 1977, dated the 30th day of August 1985. Whereupon the completion of the tie-in to the City of Huntington, the discharge from the plant shall cease.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit; with the plans and specifications submitted with Permit Application No. WV0035912 dated the 23rd day of August, 19 90 and amended Permit Application received the 19th day of September 1990 \_\_\_\_\_; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the State Water Resources Board.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0035912, dated the 23rd day of August, 19 90 and amended Permit Application received the 19th day of September 1990 \_\_\_\_\_, and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Article 5A, Chapter 20 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Article 5A, Chapter 20 of the Code of West Virginia and is transferable under the terms of Section 7 of said article.

By:   
Chief

AT THE SPECIAL MEETING OF THE COUNCIL OF THE TOWN OF CEREDO, WEST VIRGINIA, HELD ON July, 29, 1991, AT Town Hall, ITS REGULAR MEETING PLACE.

Councilman J. D. Spangler moved that the following Resolution be adopted by the Council of The Town of Ceredo, West Virginia, and that council waive any further readings of the proposed Resolution, the Resolution being as follows:

"Be it resolved by the council of The Town of Ceredo:

The council of The Town of Ceredo hereby resolves that The City of Kenova shall be authorized to supply sewerage system facilities consisting of an 18-inch force main and appurtenances (the "Facilities") within the corporate limits of The Town of Ceredo in accordance with the Intergovernmental Agreement between The City of Kenova and The Town of Ceredo, and the council of The Town of Ceredo hereby consents to The City of Kenova supplying the Facilities within the corporate limits of The Town of Ceredo in accordance with said Intergovernmental Agreement."

Councilman Terry Akers seconded the motion.

After due deliberation and discussion, it was voted unanimously to immediately and forthwith adopt the proposed Resolution in its entirety, there being present and voting thereon the following persons, namely: Wase A. Kover, Mayor of The Town of Ceredo, Stanley Fink, Clerk of The Town of Ceredo, J. D. Spangler, Terry Akers, and \_\_\_\_\_, members of the council of The Town of Ceredo, all of whom voted in the affirmative to adopt the proposed Resolution in its entirety without change thereof or therein; and further at said time all of said persons voted in the affirmative to waive and dispense with any further reading or readings of the proposed Resolution.



CERTIFICATION

I, Shirley A. Blake, Clerk of The Town of Ceredo, hereby certify that the foregoing Resolution was adopted by unanimous affirmative vote of the members of council of The Town of Ceredo, West Virginia, and the affirmative vote of the said Mayor and Clerk of The Town of Ceredo, at a Special meeting held at the town council of The Town of Ceredo on the ~~26th~~ day of July, 1991.

THE TOWN OF CEREDO

By

Shirley A. Blake  
Its Clerk

08/05/91  
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INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made this 13th day of December, 1990, by and between the CITY OF CEREDO, WEST VIRGINIA, a municipal corporation, hereinafter referred to as "CEREDO," party of the first part, the CITY OF KENOVA, WEST VIRGINIA, a municipal corporation, hereinafter referred to as "KENOVA," party of the second part, to construct, maintain and operate lift stations, force mains and appurtenances to transport the sewage from Kenova and Ceredo to the City of Huntington sewage treatment facilities for treatment.

KENOVA will pay for the cost of construction, operation and maintenance of the 19th Street lift station, the 9th Street lift station, and the 16" force main and appurtenances from Kenova to the point of connection to the 18" force main in Ceredo.

CEREDO will pay for the cost of construction, operation, and maintenance of the Main Street lift station and the 8" force main and appurtenances from Ceredo to the point of connection to the 18" force main in Ceredo.

CEREDO will also construct an 18" force main and appurtenances from Ceredo to the point designated by the City of Huntington Sanitary Board. CEREDO and KENOVA will share the Local Share of the engineering and construction costs of the 18" force main on a 31.8% and 68.2% basis, respectively. CEREDO will be responsible for routine maintenance of the valves on the 18" force main and CEREDO and KENOVA will share the costs of repair and replacement on the basis of the previous year's metered flow by each community.

CEREDO and KENOVA will each be responsible for their individual agreements with the City of Huntington and for the payment of all charges related to the treatment of their sewage and the operation and maintenance of their individual meters.

CEREDO and KENOVA will jointly enter into an agreement with the Northern Wayne Public Service District, if necessary, to share the cost of the construction of the meter



building and the 24" force main and appurtenances between the meter building and the Huntington treatment facility.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their appropriate officials in accordance with the proper corporate resolutions, as reference to the minutes of the meetings of said parties shall disclose, as of the day and year first above written.

ATTEST:

*Shirley Cobb*  
City Clerk

CITY OF CEREDO, WEST VIRGINIA

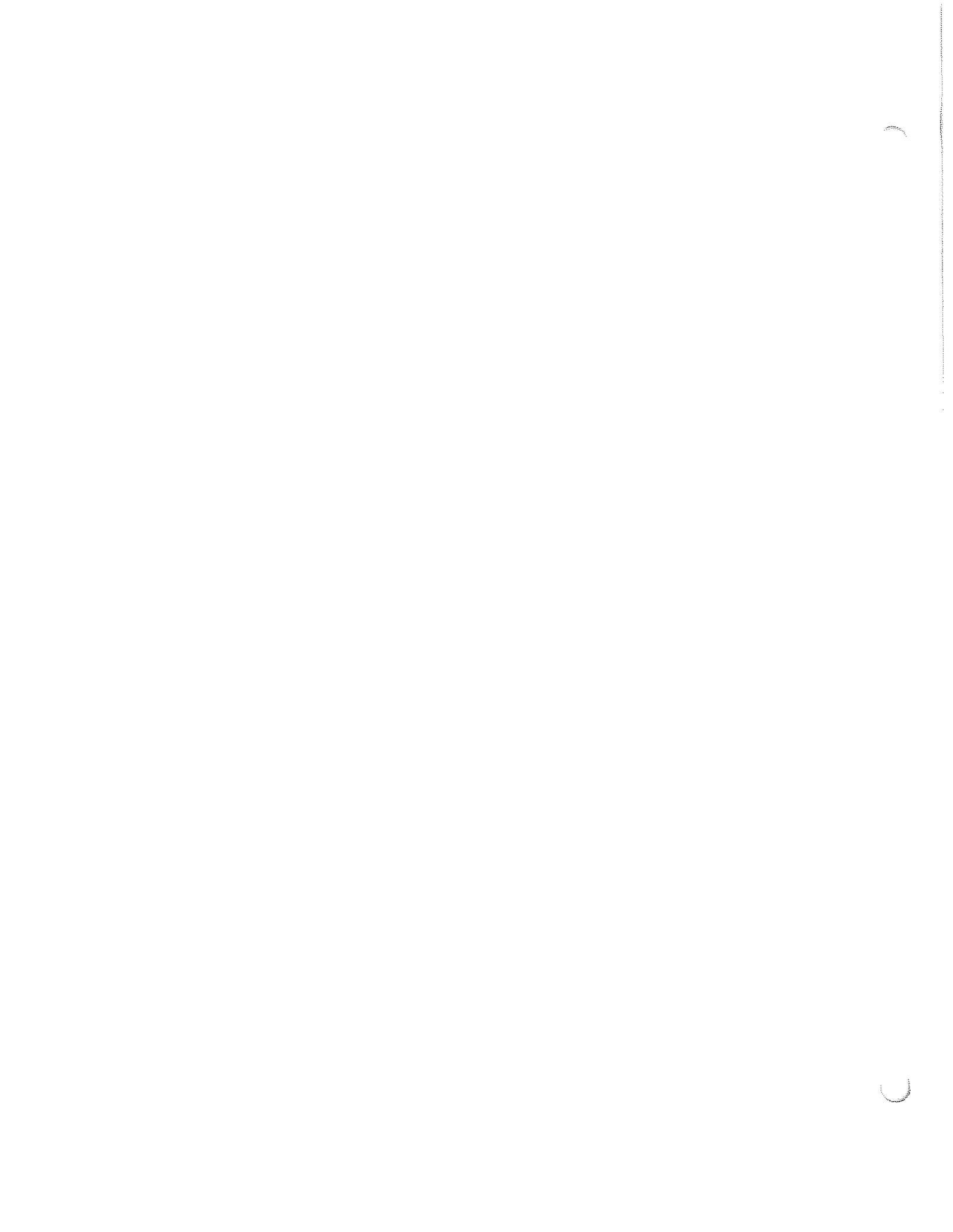
By *Wase A. Napier*  
Its Mayor

ATTEST:

*Sheila A. Wheeler*  
City Clerk

CITY OF KENOVA, WEST VIRGINIA

By *Franklin D. Kirk*  
Its Mayor





SERVICE AGREEMENT

THIS AGREEMENT, made this 7th day of August, 1991, by and between the CITY OF HUNTINGTON, WEST VIRGINIA, a municipal corporation, by and through the SANITARY BOARD OF THE CITY OF HUNTINGTON hereinafter referred to as the "SANITARY BOARD", party of the first part, and the CITY OF KENOVA a public corporation, hereinafter referred to as "KENOVA", party of the second part.

WHEREAS, the SANITARY BOARD has constructed and placed in operation a sewage treatment plant and related facilities (collectively referred to as the "SANITARY BOARD facilities") and is presently receiving and treating sewage from the City of Huntington, as well as from areas outside of the City of Huntington; and

WHEREAS, KENOVA is preparing to construct improvements to it's sanitary sewer collection system which will connect to the SANITARY BOARD's facilities as hereafter described; and

WHEREAS, KENOVA anticipates executing an inter-governmental agreement with the City of Ceredo such that KENOVA and Ceredo will discharge all of the wastewater generated in their service areas into an eighteen inch (18") Force Main which will transport the wastewater to the SANITARY BOARD'S facilities; and

WHEREAS, KENOVA must be assured that the SANITARY BOARD will accept the wastewater generated within KENOVA and must ascertain and secure equitable rates for the treatment of said wastewater that will be paid to the SANITARY BOARD; and

WHEREAS, it is in the public interest and to the advantage of the parties to enter into a service agreement to provide for the SANITARY BOARD's receiving and treating sewage from KENOVA and to set forth the terms and conditions under which the foregoing may be accomplished; and

WHEREAS, the SANITARY BOARD and KENOVA desires to enter into a service agreement to accomplish the purposes set forth above, and to further set forth the terms, covenants and conditions of the Agreements and understanding between them as hereafter provided;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto, and their successors and assigns, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE I  
SERVICE COVENANTS

SANITARY BOARD agrees to accept and render sewage treatment service to all public, domestic, commercial, industrial and other properties serviced by the KENOVA sewer system and by the south KENOVA Public Service District subject to the limitations specified herein, and provided that such sewage originates from within the corporate limits of the City of KENOVA and from within the service area of the South KENOVA Public Service District and otherwise conforms with the applicable rules and regulations promulgated or to be promulgated by the SANITARY BOARD concerning the type of sewage and industrial wastes that are acceptable for treatment at the SANITARY BOARD plant.

KENOVA covenants that any sewage collection facilities it constructs shall be in accordance with the provisions of this Agreement, and that the construction costs and all related project costs associated with the construction of KENOVA's sewage system, and the facilities required to connect KENOVA's sewage system to the SANITARY BOARD Facilities shall be the sole responsibility of KENOVA.

KENOVA agrees that the SANITARY BOARD shall be the sole and exclusive agency during the entire life of this Agreement to provide sewage treatment service to the KENOVA Sewage system.

KENOVA further covenants that it will not engage in the business of providing sewage treatment service to any other areas that may reasonably be served by the SANITARY BOARD Facilities, nor authorize any other agency, public or private, to do so in competition with or in substitution for the SANITARY BOARD. Notwithstanding the aforesaid covenant, KENOVA reserves the right to subsequently establish treatment facilities as may be necessary for the efficient and economic treatment of sewage emanating in portions of KENOVA, which, by standards of good and reasonable engineering practice, cannot be delivered to the SANITARY BOARD facilities for treatment.

ARTICLE II  
OPERATION AND MAINTENANCE RESPONSIBILITIES

The SANITARY BOARD shall be responsible for the proper treatment and disposal of KENOVA's sewage after it is discharged into the SANITARY BOARD facilities, provided that such sewage discharge is in compliance with provisions of this Agreement.

KENOVA shall enact and agree to keep in force and to enforce a proper resolution or ordinance, as provided by law, requiring all improved properties reasonably accessible to a public sanitary sewer of KENOVA, which ultimately connects to the SANITARY BOARD facilities, to connect the sewage facilities of each property to said sewer, providing appropriate fines and penalties for the violation thereof, and prohibiting the discharge of acceptable sewage emanating from each such property in any other manner whatsoever.

KENOVA further agrees to operate and maintain their sewage collection facilities in a state of good repair during the term of this Agreement; and to pay all costs and charges necessary for such maintenance and repair; and to promptly replace all defective facilities from time to time as may be

deemed necessary by KENOVA. It is understood that this provision applies to all repairs which may detrimentally affect the SANITARY BOARD facilities.

The SANITARY BOARD shall have the right to promulgate, issue, publish, and enforce rules and regulations governing its activities and carrying into effect the provisions of this Agreement. Such rules and regulations may include provisions prohibiting or regulating certain discharges into the SANITARY BOARD facilities which may be harmful to the SANITARY BOARD facilities. To the extent that the SANITARY BOARD may not be empowered to enforce its rules and regulations within the areas of KENOVA sewer system, KENOVA shall adopt and enforce such rules and regulations to the extent empowered by law.

### ARTICLE III PROVISIONS FOR CONNECTION

The SANITARY BOARD agrees to accept for treatment, and KENOVA agrees to deliver for treatment, the sewage flow generated from KENOVA's sewage collection system, subject to the following limitations:

1. Connection Location

KENOVA's sewage collection system shall connect to the SANITARY BOARD's facilities at a single point located within the City of Huntington. The physical connection shall be made through a force main entering the existing metering building constructed by Northern Wayne County Public Service District and leased to the SANITARY BOARD pursuant to a service agreement between the SANITARY BOARD and Northern Wayne Public Service District dated February 10, 1989. It is understood that no other connection to the SANITARY BOARD's facilities is approved, nor is any right for future KENOVA connections to the SANITARY BOARD's facilities necessarily inferred, under the provisions of this Agreement.

2. Ownership of Facilities

All sewage collection facilities built within Wayne County, outside the City of Huntington by KENOVA shall

remain under title and ownership of KENOVA. KENOVA agrees that it will not allow the use of their facilities by any entity without prior written approval from the SANITARY BOARD.

The City of Huntington will grant KENOVA a perpetual easement for the construction, maintenance and operations of that section of KENOVA's sewage force main and the flow metering facilities, which are located on property owned by the City of Huntington, and used to deliver and meter the sewage from KENOVA's collection system to the SANITARY BOARD's facilities and are constructed pursuant to this agreement. Upon the satisfactory completion of construction and written acceptance by the SANITARY BOARD, KENOVA agrees to release or reconvey said easement to the City of Huntington and convey and transfer the title and ownership of these facilities to the SANITARY BOARD.

3. Maximum Flow Contribution

KENOVA's total flow contribution from the sanitary sewer systems to the SANITARY BOARD facilities shall not exceed a maximum average daily flow of 1,500,000 gallons per day.

For the purpose of this provision, the average daily flow of 1,500,000 gallons per day shall be defined as the arithmetic average of all flows over any 24 hour consecutive period, as measured by the flow meter that must be installed under the terms of this Agreement.

KENOVA agrees not to issue any new sewer connection permits which will cause the total flow contribution from their sewer system to the SANITARY BOARD Facilities to exceed the maximum average daily flow of 1,500,000 gallons per day as defined above. In the event that the maximum flow from KENOVA should exceed this maximum flow contribution, KENOVA shall immediately impose a ban on all new service connections within it's sewer service area, and initiate an engineering evaluation of their sewer system, at KENOVA's expense, to determine the cause of the excessive flow contribution and if the reason for exceeding the maximum average daily flow is determined to be excessive infiltration, KENOVA will develop a corrective action plan and schedule to reduce the flow contribution to within the specified maximum limit. KENOVA's corrective action plan and schedule must be developed within a reasonable time period, as determined by the SANITARY BOARD's consulting engineer and agreed upon by KENOVA's consulting engineer, and must be submitted to the SANITARY BOARD for review and approval, which such approval shall not be unreasonably

withheld. Upon receipt of the SANITARY BOARD's approval of the proposed corrective action plan and schedule, KENOVA shall implement the plan accordingly. In the event that the engineering evaluation should determine that the cause of the excessive flow contributions is not due to excessive infiltration, it may be necessary to renegotiate this provision of the agreement. Should KENOVA fail to develop or implement a required corrective action plan in a timely manner, the SANITARY BOARD shall have the right to impose sanctions, such as excessive flow surcharges, or other sanctions as approved by the West Virginia Public Service Commission.

4. Flow Metering Requirements

KENOVA agrees to install and maintain flow monitoring equipment of a type satisfactory to the SANITARY BOARD to continually measure and record the volume of sewage contributed to the SANITARY BOARD Facilities from the sewer system. KENOVA shall install a flow metering device, a flow indicator, a recorder and totalizer at the point of connection and provide the necessary telemetering and recording equipment to transmit the flow signal to the SANITARY BOARD'S treatment plant. The cost of the flow monitoring and telemetering equipment shall be the responsibility of KENOVA.

In the event of a failure of any portion of the flow measuring or telemetering system, KENOVA shall make the necessary repairs as soon as possible. If there is any significant difference between the totalizer readings at KENOVA'S pump station and at the SANITARY BOARD plant, the totalizer at the point of discharge shall be used for determining service charges. If measured flow data is not available due to faulty registration, breakdown or other reasons, the KENOVA flow contribution shall be estimated based upon the arithmetic average of the last three (3) meter readings, adjusted to reflect any increase or decrease in flow resulting from new taps, shut-offs or rainfall. Adjustments shall be based upon the historic flow data.

KENOVA and the SANITARY BOARD shall have the accuracy of their respective flow meters tested by a qualified factory-authorized technician at least once a year. Each party shall notify the other at least 48 hours in advance of the time and date when tests are scheduled in the event the SANITARY BOARD or KENOVA should wish to have a representative present for the test. The SANITARY BOARD and KENOVA shall have the right to

inspect and check the accuracy of the flow meters at their expense at any time they may desire during the year. Each party shall notify the other party at least 48 hours in advance of such testing, so that they may arrange to have a representative present if so desire. Each party will provide the other party complete access to the flow meter installations during normal business hours for the purpose of such inspection and testing.

5. Construction Standards

KENOVA agrees to design and construct the proposed sewage collection facilities, and any additions thereto, in accordance with accepted standard of good engineering practice and the applicable DNR and WV Department of Health design standards in effect at such time. The design and construction of the sewage collection system shall include provisions to minimize extraneous flow from infiltration and inflow sources. KENOVA, upon request, agrees to furnish the SANITARY BOARD with certified copies of the results of infiltration or exfiltration tests for the sewer constructed by KENOVA.

KENOVA agrees to provide the SANITARY BOARD a complete set of as-constructed documents for the sewer system that will be constructed pursuant to this Agreement. The plans submitted shall show the exact location of the proposed connection to the SANITARY BOARD's facilities as well as the required flow metering and telemetering equipment. The SANITARY BOARD shall only have the right to review and approve such plans with respect to the physical connection into the SANITARY BOARD facilities and the required flow metering and telemetering equipment. KENOVA agrees to coordinate the construction of these items with the SANITARY BOARD.

6. Protection During Construction

KENOVA agrees to take all reasonable measures to protect the SANITARY BOARD's facilities from damage during construction. The physical connection to the SANITARY BOARD's Facilities is proposed to be through a flow meter to a blind flange/valve assembly in the metering building constructed by Northern Wayne County Public Service District and leased to the SANITARY BOARD. This arrangement would permit The SANITARY BOARD'S and NORTHERN WAYNE'S main to remain fully operational at all times, and it will prevent any sand, silt, debris, or water from entering the SANITARY BOARD system during construction. Prior to opening the gate valve and discharging any sewage into the SANITARY BOARD system, KENOVA shall ensure that all sewers, force mains and

pump stations have been thoroughly cleaned of all silt, sand and debris.

KENOVA shall notify the SANITARY BOARD at least five (5) days in advance of the date when the actual physical connection into the metering building is to be made. KENOVA shall notify the SANITARY BOARD at least seven (7) days in advance of the date that KENOVA intends to open the gate valve and begin discharging into the SANITARY BOARD's facilities.

7. Prohibited Wastes

KENOVA agrees not to permit or allow the discharge of any wastes or waters into the KENOVA sewer system which will interfere with the operation and maintenance of the SANITARY BOARD Wastewater Treatment Plant.

KENOVA shall accomplish this purpose by adopting appropriate resolutions or ordinances governing the use of their sewage facilities, which are at least as stringent as comparable ordinances and resolutions adopted by the SANITARY BOARD and the City of Huntington, and to faithfully prosecute any offender under the same to ensure that such discharges do not enter the KENOVA sewer system or the SANITARY BOARD facilities.

8. Septic Sewage

The design of the KENOVA sewage collection facilities should contain provisions to prevent the sewage collected from becoming septic within KENOVA'S sewer system or at the point of discharge into the SANITARY BOARD facilities. If septic sewage conditions should occur following completion of construction, K E N O V A agrees to develop and submit to the SANITARY BOARD an approvable corrective action plan and schedule to eliminate this condition within thirty (30) days of receipt of written notification of the problem condition from the SANITARY BOARD.

If KENOVA fails to submit the required corrective action plan and schedule within the thirty (30) day period or fails to take the additional measures to correct this problem as outlined in the plan and schedule, the SANITARY BOARD shall have the right to take the necessary measures to correct the problem on their own, and assess the full costs thereof to KENOVA. KENOVA shall also be liable for the costs to repair any damages or replace any facility or equipment damaged as a result of KENOVA'S discharge of septic sewage into the SANITARY BOARD facilities. Any increase in the SANITARY

BOARD's operating costs caused by the discharge of septic sewage from KENOVA or for the operation of preventative measures shall also be the responsibility of KENOVA. Such costs shall be billed to KENOVA in addition to their metered service charges.

9. Sewer Connections and Extensions

Upon completion of the initial construction project for the sewer system, KENOVA shall forward a quarterly report which clearly shows the total number of sewer services connected to the system, the total number of new sewer service connections for the reporting period and a copy of all new sewer service applications and permits to the SANITARY BOARD.

KENOVA shall have the right to allow new taps into the sewers built under the initial construction project without prior approval from the SANITARY BOARD provided that KENOVA does not exceed maximum flow contribution established by this Agreement pursuant to the provisions of Article III, Section 3.

KENOVA shall also have the right and privilege to extend its sewer system into new service areas within its jurisdiction, provided KENOVA complies with all of the provisions of this Agreement. Copies of applications for sewer extensions to the KENOVA sewer system shall be submitted to the SANITARY BOARD during the planning review stage for approval. The SANITARY BOARD shall only have the right to reject sewer extensions that (a) would cause KENOVA to exceed its maximum allowable flow contribution to the SANITARY BOARD Facilities or otherwise violate the provisions of this Agreement; or (b) would cause KENOVA to violate any connection ban imposed by any regulatory agency on all new service connections to the SANITARY BOARD treatment plant.

ARTICLE IV  
INDUSTRIAL AND COMMERCIAL WASTE CONTRIBUTIONS

KENOVA agrees to enact and enforce necessary regulations required to insure that KENOVA will not allow any user who may discharge industrial or commercial waste to connect into the KENOVA sewer system without a prior written permit issued by the SANITARY BOARD and to insure that the provisions of this Agreement are fulfilled.

KENOVA also agrees to enter into an inter-jurisdictional Industrial Pretreatment Agreement (as contained in Exhibit 1 attached hereto) and require all industrial or commercial users who are or will be discharging industrial or commercial wastes into the KENOVA sewer system to enter into an Industrial Sewer Use Service Agreement (as contained in Exhibit 2 attached hereto) with the SANITARY BOARD.

Applications for any such permit shall be accompanied by such information, relating to the nature of character of the industrial waste proposed to be discharged or otherwise, including without limitation a detailed engineering report in respect thereof or an Industrial Wastes Questionnaire prepared by a registered engineer or engineering firm, as the SANITARY BOARD may impose. No permit for the discharge of industrial wastes issued under this section shall be deemed to give any right to the applicant to continue such use and any such permit may be revoked by the SANITARY BOARD at any time.

Whenever necessary, in the opinion of the SANITARY BOARD, the industrial or commercial user shall provide, at his expense, such facilities for preliminary treatment and handling of industrial or commercial wastes as may be necessary.

Any industrial or commercial user who shall discharge industrial or commercial wastes into the KENOVA sewer system, when required by the SANITARY BOARD, shall construct and thereafter shall properly maintain, at his own expense, a suitable control manhole to facilitate observation, measurement and sampling by the SANITARY BOARD.

Any such control manhole, when required by the SANITARY BOARD, shall be constructed at an accessible, safe, suitable and satisfactory location in accordance with plans approved by the SANITARY BOARD prior to commencement of construction.

Grease, oil and sand interceptors shall be provided by the applicant when they are required by the SANITARY BOARD for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients. All such interceptors shall be of a type and capacity approved by the SANITARY BOARD and shall be located as to be readily and easily accessible for cleaning and inspection. Where any such required facilities or interceptors are constructed, they shall be maintained continuously in satisfactory and effective operation by the applicant at his expense.

Industrial or commercial wastes being discharged into the sewer system shall be subject to periodic sampling, inspection and determination of character and concentration. Also, the SANITARY BOARD may at its discretion sample and inspect any industrial or commercial facilities as frequently as may be deemed necessary to determine compliance with the SANITARY BOARD's industrial pretreatment program. Sewage sampling facilities shall be exercised in the collection and preservation thereof in as nearly the natural state as possible, including refrigeration of all samples which are intended for analysis by biochemical methods.

Laboratory methods used in the analysis of samples of industrial wastes shall be those set forth in the latest edition of "Standard Methods for the Examination of Water and Sewage" as published by the American Public Health Association; provided, however, that alternate methods for the analysis of industrial wastes may be used.

Any industrial or commercial user who is discharging industrial or commercial wastes into the KENOVA sewer system and who contemplates a change in the method of operation

which will alter the type of industrial or commercial wastes at the time being discharged into the sewer system shall notify KENOVA and the SANITARY BOARD, in writing, at least ten (10) days prior to consummation of such change and enter into a new Industrial Sewer Use Service Agreement with the SANITARY BOARD.

No industrial or commercial user shall cause the discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of longer duration than fifteen (15) minutes, more than five (5) times its average hourly concentration of flow.

ARTICLE V  
SERVICE CHARGES AND BILLING

In exchange for the rights, privileges and benefits of utilizing the SANITARY BOARD facilities for treatment of the KENOVA sewage, KENOVA covenants and agrees to pay the SANITARY BOARD service charges computed in the following manner:

1. Annual operation and Maintenance Charges

KENOVA agrees to pay the SANITARY BOARD their proportionate share of the actual net annual operation and maintenance costs for the SANITARY BOARD facilities which are utilized to treat the KENOVA sewage. KENOVA's proportionate share shall be determined by multiplying the ration of the total volume of sewage contributed to the SANITARY BOARD Facilities, as measured by the flow meter to be installed at the point of connection minus Ceredo's flow contribution as measured by the flow meter to be installed at Ceredo's Pump Station at Main Street and "A" Street, to the total volume of sewage treated at the SANITARY BOARD treatment plant, as measured by the plant's raw sewage flow meter, by the actual net annual operation and maintenance costs.

For the purpose of determining KENOVA's share, the net annual operation and maintenance costs shall include all reasonable expenses and repair costs required to keep the treatment plant utilized by KENOVA operating continuously in a safe and efficient manner and in

compliance with applicable State and Federal Regulations. Such operating and maintenance costs are defined to include the cost of all labor, power, chemicals, equipment, materials, vehicle expense, repairs, replacements, improvements and administrative expenses used in the operations and maintenance of the treatment plant. The following costs shall be specifically excluded from the operation and maintenance costs applicable to KENOVA:

- A. Costs of preparing, mailing and receiving the SANITARY BOARD sewer rental bills, or of collecting delinquent costs from the SANITARY BOARD customers,
- B. Costs of operating, maintaining and repairing the SANITARY BOARD's sewer collection system,
- C. Costs of operating, maintaining and repairing any SANITARY BOARD pump stations,
- D. Costs of operating an industrial waste pretreatment program, unless industrial users are served by KENOVA,
- E. Any major repair or maintenance item to the SANITARY BOARD facilities used by KENOVA with a cost of more than \$10,000.00, which shall be considered a Capital Addition and the costs shared as per Article VI of this Agreement.

KENOVA shall pay their proportionate share of such net annual operation and maintenance costs to the SANITARY BOARD in twelve monthly installments. The SANITARY BOARD will keep a separate record of the costs of operating the treatment plant and will establish an annual cost for their operating year. That annual operating cost will be used to establish the next twelve (12) monthly billing to KENOVA by multiplying the annual operating costs by the proportioning factor and dividing by twelve (12). During the first year of operation, operating cost estimates provided by the SANITARY BOARD's consulting engineer will be used to establish proportionate shares.

The SANITARY BOARD shall submit an estimated monthly billing statement to KENOVA which clearly shows the total flow treated at the SANITARY BOARD plant, the total flow contributed to the SANITARY BOARD's facilities by KENOVA, the ratio of the KENOVA flow to the total flow, and an estimate of the net operation and maintenance costs incurred for each month. The billing statement shall be certified by the SANITARY BOARD's

consulting engineer, and it shall be delivered to KENOVA not less than twenty (20) days prior to the date on which the payment shall be due for their review. The first billing for each calendar year shall include an adjusted payment for the whole of the previous calendar year based upon an audit of the actual operation and maintenance costs for that calendar year as prepared by a mutually agreeable certified public accountant. In the event that the parties cannot come to an agreement regarding the selection of a certified public accountant, one shall be appointed by the presiding judge of the U. S. District Court at Huntington and all costs of such accounting services shall be shared. In the event that the parties cannot agree upon the estimated expenses for an upcoming calendar year, KENOVA shall continue to make payments based upon the audit for the expense of the previous year pending disposition of the dispute.

2. Debt Service Charges

KENOVA agrees that it will pay the SANITARY BOARD a proportionate share of the debt service for the specific projects intended to improve the SANITARY BOARD's wastewater treatment facilities under the present U.S. EPA mandated upgrade.

KENOVA's proportionate share for the debt service charges will be determined in the same manner as the annual operating and maintenance charges and these charges will be made by KENOVA only so long as the SANITARY BOARD is making payments of this debt pertaining to these specific projects.

It is understood and agreed between the parties hereto that the aforesaid payments of operating costs and debt service costs shall be billed and paid as one (1) monthly billing.

3. Industrial Waste Surcharges and Fees

KENOVA agrees to adopt and enforce regulations establishing provisions to assess industrial waste surcharges and fees to any industrial user that may obtain the SANITARY BOARD approval to discharge such wastes into the KENOVA sewer system in accordance with requirements of this Agreement. Such surcharge and fee rates shall be comparable to the prevailing rates contained in the SANITARY BOARD's rules and regulations. Any applicable surcharges and fees shall be billed to industrial users by KENOVA on behalf of the SANITARY BOARD and the amounts collected shall in turn be paid to the SANITARY BOARD by KENOVA.

4. Special Service Charges

In the event that the SANITARY BOARD and KENOVA mutually agree to have any Special Services performed by the SANITARY BOARD, KENOVA shall be charged for such Special Service as determined by prior negotiation of the parties. Special Services shall be defined as any service provided to KENOVA by the SANITARY BOARD beyond the basic treatment service provided for by this Agreement. Such special Services may include but are not necessarily limited to:

- A. Initiation and administration of a permit system for KENOVA customers,
- B. Inspection of service connections into the KENOVA sewer system,
- C. Maintenance of the KENOVA sewer system, and
- D. Operation and maintenance of the KENOVA sewage pumping stations.

The charges to be paid to the SANITARY BOARD under Article V of this Agreement shall become effective as soon as KENOVA begins to deliver sewage into the SANITARY BOARD Facilities. If necessary, the initial monthly payment under this Agreement shall be made on a pro-rata basis as agreed upon by the consulting engineers of the respective parties.

All monthly payments to the SANITARY BOARD shall be paid within thirty (30) calendar days after the close of the billing period or the date of the bill, whichever is longer. If any monthly installment is not paid within the specified thirty (30) day period, the SANITARY BOARD shall have the right to assess a ten (10) percent penalty that will be added thereto. If the installment and the penalty is not paid within sixty (60) days after the date of the bill, the outstanding aggregate amount thereof shall bear interest from the penalty date at a rate of one percent per month or any fraction thereof.

KENOVA covenants to enact and keep in effect and in force a schedule of sewer rental rates or other user charges which will generate amounts of revenue adequate and sufficient to enable KENOVA to make all payments to the SANITARY BOARD as required by this Agreement. KENOVA shall reserve all rights relative to the basis and method by which it shall establish rates and charges to its own customers in order to generate the funds necessary to meet its obligations and payments under this Agreement. KENOVA shall not provide free service for any users of the KENOVA sewer system.

The SANITARY BOARD agrees to keep and maintain accurate records of all operation, maintenance and administrative expenses for the SANITARY BOARD Facilities utilized for the treatment of the KENOVA sewage. The SANITARY BOARD shall supply KENOVA with copies of any annual audit reports required as a condition of the SANITARY BOARD's debt service agreements, and copies of the SANITARY BOARD's annual budget information so that KENOVA may prepare their own budget.

#### ARTICLE VI CAPITAL ADDITION

With respect to the SANITARY BOARD Facilities, the SANITARY BOARD shall have the right to exercise exclusive discretion as to whether Capital Additions shall or shall not be constructed or acquired; and KENOVA shall have the right to exercise exclusive discretion as to whether Capital Additions shall or shall not be constructed or acquired for the KENOVA sewer system, subject to the limitations of this Agreement.

The responsibility for carrying out the construction or acquisition of said authorized Capital Additions shall rest respectively with the SANITARY BOARD and KENOVA. In each appropriate case, the SANITARY BOARD and KENOVA shall have exclusive discretion as to all matters concerning financing

for the purpose of providing funds to pay for the cost of constructing or acquiring said authorized Capital Additions which are their respective responsibilities.

KENOVA agrees that where any betterments, improvements or other Capital Additions, other than routine maintenance and repairs, are required for the SANITARY BOARD Facilities utilized for the treatment of the KENOVA sewage, or are ordered by appropriate Federal or State agencies having jurisdiction, KENOVA shall be liable for its proportionate share of the capital cost of the said betterments, improvements or other Capital Additions. In determining KENOVA's proportionate share of any such capital cost, any State or Federal grants received by the SANITARY BOARD to assist in completing the Capital Additions shall be deducted from the total capital cost such that only the net capital cost incurred is utilized to determine KENOVA's share.

Determination of KENOVA's proportionate share of the capital cost of any such Capital Addition shall be based upon the Design Parameters which have been used in the design and said Capital Addition, the actual construction costs as determined by the SANITARY BOARD's consulting engineer, and KENOVA's proportionate contribution to the Design Parameters of said Capital Addition. The term Design Parameter shall mean the basic design criteria or limits that are commonly used in the engineering profession to determine the size or type of facilities required and therefore the costs of the required facilities. Examples of typical Design Parameters include "total flow" or hydraulic loading, organic loading, solids loading, etc.

The costs of any Capital Additions will thus be allocated or shared by each party in direct proportion to each party's relative contribution to the Design Parameters that have in effect caused said costs. For example, should the SANITARY BOARD treatment plant have to be upgraded to provide ammonia nitrogen removal in the future, KENOVA's

share of the required capital cost would be determined by their proportionate contribution to the plant's design flow, namely the ration of the KENOVA's maximum average daily flow per day to the SANITARY BOARD plant's design average daily flow per day.

Any proportioning of capital costs found necessary under the provisions of this Article of the Agreement shall be determined and fixed by the consulting engineers of the SANITARY BOARD and KENOVA, and shall be binding upon the parties of this Agreement. In the event that the consulting engineers of the parties cannot come to an agreement regarding proportioning of costs, a third engineer shall be mutually selected as an arbitrator, whose decision shall be binding upon the parties to this Agreement.

#### ARTICLE VII GENERAL PROVISIONS

Each of the parties to this Service Agreement hereby agree to the following general provisions:

1. Indemnification

KENOVA and the SANITARY BOARD mutually agree to indemnify and save harmless each other against all loss, losses, costs or damages on account of any injury to persons or property incurred in the performance of this Agreement due to the negligence of either party, its servants, agents or employees, or resulting from any violation of this Agreement which causes the SANITARY BOARD sewage treatment plant or interceptor to function improperly.

2. Assignment

This Agreement and all provisions thereof shall be binding upon the parties hereto and their successors, and it shall not insure to the benefit of any other person or entity not a party hereto, except as expressly provided herein. This Agreement shall not be assigned by either party without the written consent of the other party.

3. Severability

The provisions of this Agreement shall be severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not render invalid or unenforceable any of the other provisions and they shall remain in full force and effect.

4. Waiver

The waiver of any breach of this Agreement by any part hereto shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or another provision of this Agreement.

5. Captions

Captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections of this Agreement nor in any way affect this Agreement.

6. Resolution of Controversies, Claims and Disputes

The parties hereto agree that in the event any controversy arises relative to the provisions of this Agreement, or any other condition relating hereto, then in that event the controversy shall be resolved by and Regulations governing Sewer Utilities published by the Public Service Commission of West Virginia and/or by the Public Service Commission of West Virginia.

7. Term of the Agreement

This Agreement shall become effective upon its execution by the parties hereto and the term shall continue and remain in force for a term of forty (40) years from the date hereof, and thereafter from year to year, unless and until a new agreement is negotiated between the parties, or until this Agreement is terminated by either KENOVA or the SANITARY BOARD upon a minimum twenty-four (24) month prior written notice to the other party. The SANITARY BOARD shall also have the right to terminate this Agreement upon the failure or refusal of KENOVA to make payment when due of any amounts payable to the SANITARY BOARD under the terms hereof, or to comply with any other provisions of this Agreement to be performed or observed by KENOVA.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their appropriate officials in accordance with proper corporate resolutions, as reference to the minutes of the meetings of said parties shall disclose, as of the day and year first above written.

SANITARY BOARD OF THE CITY OF  
HUNTINGTON, WEST VIRGINIA

By

*Robert H. Hill*  
Its Chairman

ATTEST:

*Ann C. Shupe*

THE CITY OF KENOVA

By

*Gregory Smith*  
Its Mayor

ATTEST:

*Shirley A. Wheeler*

**EXHIBIT 1**  
**INTERJURISDICTIONAL INDUSTRIAL**  
**PRETREATMENT AGREEMENT**

This Agreement made as of this the \_\_\_\_\_ day of \_\_\_\_\_, 1991, by and between the CITY OF HUNTINGTON, WEST VIRGINIA, a municipal corporation, by and through the SANITARY BOARD OF THE CITY OF HUNTINGTON, hereinafter referred to as the "BOARD", party of the first part, and the CITY OF KENOVA, a public corporation, hereinafter referred to as "KENOVA", party of the second part.

WHEREAS, the BOARD owns and operates a wastewater treatment system which is permitted by the U. S. Environmental Protection Agency (EPA) and the State of West Virginia, Department of Natural Resources (DNR), and

WHEREAS, the BOARD has developed and implemented an industrial pretreatment program applicable to all industrial users of its wastewater treatment system as a requirement of its discharge permit, and

WHEREAS, KENOVA has entered into a Service Agreement with the BOARD, dated \_\_\_\_\_, 19\_\_, whereby KENOVA is permitted to discharge its sewage to the BOARD's wastewater treatment system for treatment, and

WHEREAS, KENOVA desires to continue to utilize the BOARD's wastewater treatment system and recognizes its industrial waste control obligations under the Federal General Pretreatment Regulations (40 CFR, Part 403).

NOW, THEREFORE, WITNESSETH THIS AGREEMENT, that for and in consideration of the premises, and the mutual covenants and agreements herein set forth, the parties hereby do mutually covenant and agree as follows:

1. The BOARD and KENOVA hereby agree to cooperate in the effort to attain full compliance with the requirements of the Federal Pretreatment Regulations and to establish an Industrial Pretreatment Program designed to facilitate the safe and efficient handling of industrial waste discharges within KENOVA's service area.
2. The BOARD and KENOVA hereby agree that the BOARD should have the primary administrative responsibility for the Pretreatment Program.
3. KENOVA shall certify and document that there are no industrial users, as defined by the BOARD, connected to KENOVA's sewer system.
4. KENOVA shall designate and appropriate official or employee to regularly review all applications for connection permits to KENOVA's sewer system to determine whether an industrial user will be locating within KENOVA's service area. If prospective industrial user is identified, KENOVA shall report this fact to the BOARD and the provisions of Paragraphs 5 and 7 of this Agreement shall be invoked. KENOVA shall provide the BOARD access to the connection permit records for independent verification of KENOVA's review procedures and records.
5. KENOVA shall not authorize any industrial user located within its jurisdictional boundaries to connect to or to discharge to any sewer line, pipe or other conveyance which will convey the wastewater to the BOARD's wastewater treatment system without written approval from the BOARD.
6. The BOARD shall not issue approval for an industrial user to connect to KENOVA's sewer system until the prospective industrial user has executed an Industrial User Service Agreement with the BOARD. Said Service Agreement shall require the industrial user to abide by all of the BOARD's rules and regulations relative to the Pretreatment Program and the provisions established in the Sewer Use Regulations of the Huntington City Code relative to industrial sewer use.

7. After the BOARD has given its approval for any industrial user within KENOVA to connect, KENOVA shall not authorize the industrial user to commence discharging until appropriate provisions have been made between KENOVA and the BOARD to oversee the industrial user's compliance with all applicable Federal, state, and local pretreatment requirements. This shall be accomplished by renegotiating this Agreement to establish and designate specific administrative and enforcement responsibilities between KENOVA and the BOARD for all of the pretreatment program legal and procedural functions required under the Federal Pretreatment Regulations (40 CFR, Part 403). The BOARD may develop a schedule of specific activities that must be undertaken by KENOVA to develop the required legal authority for their role in the Pretreatment Program.
8. KENOVA and the BOARD may enter into a pretreatment agreement providing the BOARD with the legal authority and responsibility for the performance of the technical and administrative activities necessary for implementation of the Pretreatment Program within KENOVA. These activities may include among others: 1) updating the industrial waste survey data; 2) providing technical services such as sampling, analyses, and engineering advice; 3) permitting; 4) compliance monitoring; and 5) enforcement support. Where pretreatment delegation occurs, the BOARD shall assess KENOVA the reasonable costs incurred by the BOARD in conjunction with the administration of the Pretreatment Program on behalf of KENOVA. The BOARD shall provide KENOVA with a detailed accounting of the pretreatment costs assessed to KENOVA.
9. KENOVA shall permit any authorized officer, employee, or designated representative of the BOARD to enter and inspect, sample, and monitor any part of KENOVA sewer system to determine compliance with this Agreement. The right of entry and inspection, sampling, and monitoring shall extend to public streets, easements, and property within which the system is located or premises where pertinent compliance records are located.
10. If the BOARD determines that KENOVA has failed or has refused to fulfill its pretreatment obligations under this Agreement, the BOARD may develop and issue a remedial plan containing a description of the nature of the pretreatment deficiencies, an enumeration of steps

that must be taken by KENOVA, and a time schedule for attaining compliance with all pretreatment requirements. Such plans shall be specifically enforceable in a court of competent jurisdiction. Where KENOVA fails to satisfy the terms of the remedial plan, the BOARD may, upon thirty (30) days written notifications, terminate sewer service to KENOVA.

11. This Agreement will remain in effect so long as the Service Agreement remains in effect. Termination of the Service Agreement shall also result in termination of this Agreement.

IN WITNESS WHEREOF, each of the said parties hereto have caused this Agreement to be executed by its proper officer, thereunto duly authorized, as of the day and year first above written.

WITNESS:

Oran C. Shays

THE SANITARY BOARD OF THE CITY  
OF HUNTINGTON, WEST VIRGINIA

BY

Robert A. Wells  
Title (Chairman)

WITNESS:

Sheila A. Wheeler

CITY OF KENOVA

BY

Garry Smith  
Title (Chairman)

EXHIBIT 2  
INDUSTRIAL SEWER USE  
SERVICE AGREEMENT

This Service Agreement made as of this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the CITY OF HUNTINGTON, WEST VIRGINIA, municipal corporation, by and through the SANITARY BOARD OF THE CITY OF HUNTINGTON, hereinafter referred to as the "BOARD", party of the first part, and the \_\_\_\_\_, party of the second part, hereinafter referred to as the "INDUSTRIAL USER".

WHEREAS, the BOARD owns and operates a wastewater treatment system which is permitted by the U.S. Environmental Protection Agency (EPA) and the State of West Virginia, Department of Natural Resource (DNR); and

WHEREAS, the BOARD must develop and implement an industrial pretreatment program applicable to all industrial users of its wastewater treatment system as a requirement of its discharge permit; and

WHEREAS, the BOARD is willing to accept and treat certain industrial wastewater discharges under the provision of its Industrial Pretreatment Program and the Sewer Use Regulations of the Huntington City Code; and

WHEREAS, the INDUSTRIAL USER desires to utilize the BOARD's wastewater treatment system by connecting into the wastewater collection system owned and operated by the CITY OF KENOVA which in turn connects to the BOARD's wastewater treatment system; and

WHEREAS, the CITY OF KENOVA has delegated the administration and enforcement authority relative to the industrial pretreatment

requirements to the BOARD under the conditions of their Interjurisdictional Pretreatment Agreement dated \_\_\_\_\_, 19\_\_\_\_; and

WHEREAS, the INDUSTRIAL USER recognizes its industrial wastewater control obligations under the Federal General Pretreatment Regulations (40 CFR, Part 403) and desires to cooperate with the BOARD in all matters of mutual interest;

NOW, THEREFORE, WITNESSETH THIS AGREEMENT, that for and in consideration of the premises, and the mutual covenants and agreements hereinafter set forth, the parties hereby do mutually covenant and agree as follows:

1. The BOARD agrees to accept the industrial wastewater discharge from the INDUSTRIAL USER provided that such discharge conforms with the standards established in the Sewer Use Regulations of the Huntington City Code.
2. The BOARD agrees to control or regulate the industrial waste discharge from the INDUSTRIAL USER in a manner similar to any other industrial user and in accordance with the provisions of the Sewer Use Regulations of the City Code.
3. The INDUSTRIAL USER agrees to abide by all of the rules and regulations governing industrial sewer use that are contained in the Sewer Use Regulations of the City Code or may be hereafter adopted by the BOARD.
4. The INDUSTRIAL USER shall obtain an Industrial Waste Permit from the BOARD in accordance with Article 933.34 of the Sewer Use Regulations of the City Code prior to connecting to or contributing to the BOARD's wastewater treatment system.
5. If the BOARD determines that the INDUSTRIAL USER has failed or has refused to fulfill any pretreatment obligations under the terms of this Agreement or the provisions of the the Sewer Use Regulations of the City Code relative to industrial sewer use, the BOARD may discontinue the acceptance of industrial wastes from

the INDUSTRIAL USER and terminate this Service Agreement by revoking the user's Industrial Waste Permit in accordance with Article 933.49 of the Sewer Use Regulations of the City Code.

6. The INDUSTRIAL USER agrees not to assign or transfer this Agreement without the written consent of the BOARD.
7. The INDUSTRIAL USER agrees to indemnify and save harmless the BOARD of and from all loss, damages, fines, and expenses which the BOARD may suffer or sustain, or be threatened with liability for or arising as a result of the discharge from the INDUSTRIAL USER.
8. This Agreement shall remain in effect so long as the user's Industrial Waste Permit remains in effect. Termination of the Industrial Waste Permit in accordance with the provisions of Article 933.49 of the Sewer Use Regulations of the City Code shall also result in termination of this Agreement.
9. The terms of this Service Agreement may be amended only by written agreement of the two parties. In any event, this Agreement shall be periodically reviewed and revised, as necessary, during the course of the routine permit renewal process provided for in Article 933.34 of the Sewer Use Regulations of the City Code.
10. In the event of any conflict between the provisions of this Agreement and the provisions of the Sewer Use Regulations of the City Code, the Regulations shall take precedence unless clearly specified otherwise.

IN WITNESS WHEREOF, each of the said parties hereto have caused this Agreement to be executed by its proper officer, thereunto duly authorized, as of the day and year first above written.

THE SANITARY BOARD OF THE CITY  
OF HUNTINGTON, WEST VIRGINIA

Witness:

\_\_\_\_\_

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

Title: Chairman

NAME OF INDUSTRY

Witness:

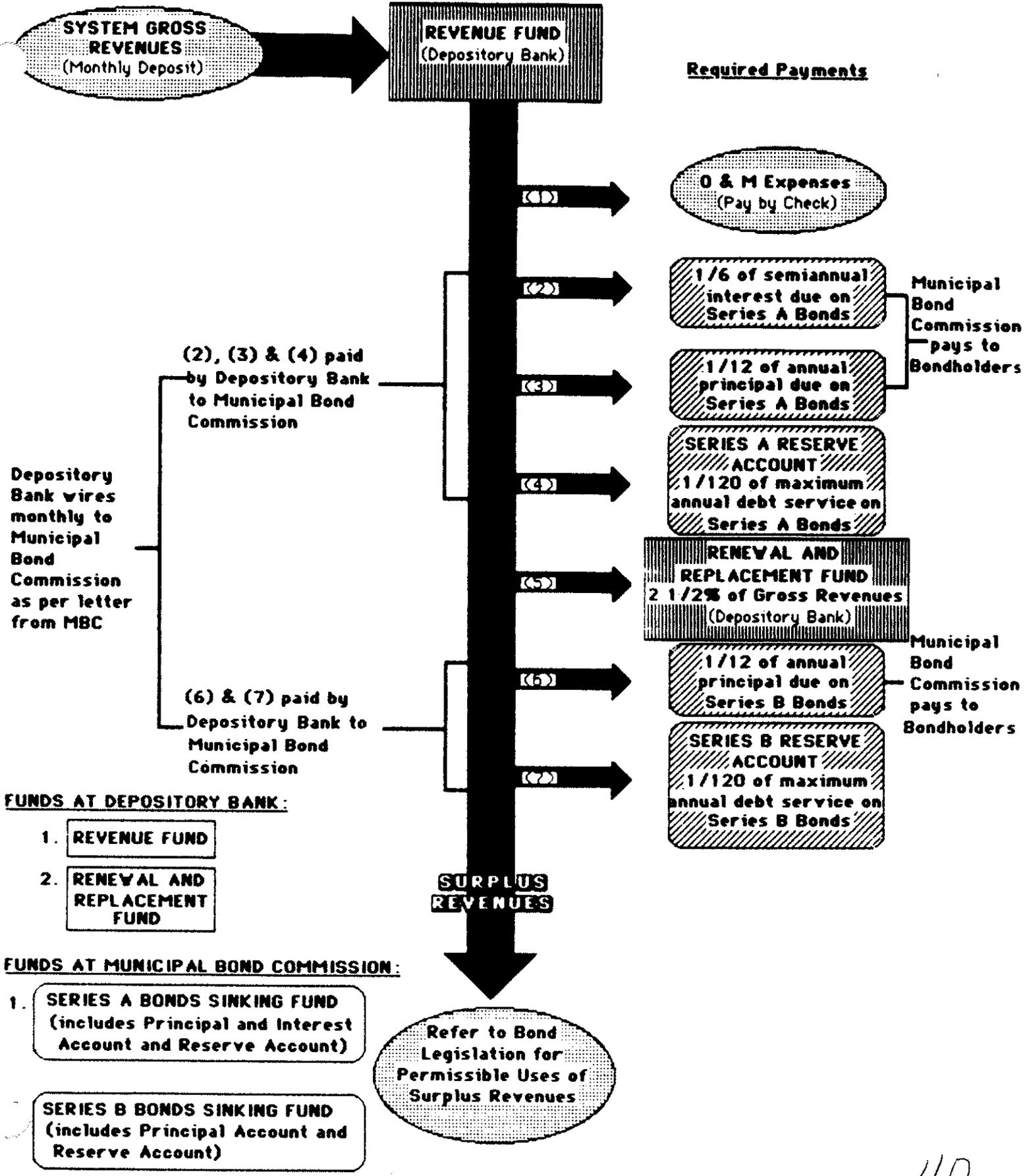
\_\_\_\_\_

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

Title: \_\_\_\_\_



# FLOW OF FUNDS SCHEMATIC DIAGRAM - SYSTEM REVENUES





INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made this 3<sup>rd</sup> day of June, 1991, by and between the CITY OF CEREDO, WEST VIRGINIA, a municipal corporation, hereinafter referred to as "CEREDO", party of the first part, the CITY OF KENOVA, WEST VIRGINIA, a municipal corporation, hereinafter referred to as "KENOVA", party of the second part, and the NORTHERN WAYNE COUNTY PUBLIC SERVICE DISTRICT, a public corporation, hereinafter referred to as "NORTHERN WAYNE", party of the third part.

WHEREAS, CEREDO and KENOVA are preparing to construct sanitary sewers to collect sewage and wastewater within their respective service areas as designated by the West Virginia Public Service Commission which will connect to NORTHERN WAYNE'S transmission lines at a twenty-four inch (24") Force Main at the meter building constructed by NORTHERN WAYNE and thereby connect to the SANITARY BOARD OF THE CITY OF HUNTINGTON'S facilities as hereafter described; and

WHEREAS, CEREDO and KENOVA are desirous of using NORTHERN WAYNE'S sanitary sewers and other related transmission lines, systems, plants, meter building, twenty-four inch Force Main, appurtenances and facilities, hereinafter referred to as "transmission lines", to transport wastewater to the SANITARY BOARD OF THE CITY OF HUNTINGTON'S sewage treatment plant and related facilities, collectively referred to as the "SANITARY BOARD'S" facilities", for treatment; and

WHEREAS, CEREDO and KENOVA are cognizant of the existence and terms of the "Service Agreement" dated February 10, 1989 and amended by "Addendum" dated \_\_\_\_\_ entered into between NORTHERN WAYNE and the SANITARY BOARD; and

WHEREAS, CEREDO and KENOVA agree to conduct their sewage collection operations in such a manner to ensure and maintain compliance by NORTHERN WAYNE of its duties and obligations under the "Service Agreement" and "Addendum" with the SANITARY BOARD;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto, and their successors and assigns, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE I  
SERVICE COVENANTS

NORTHERN WAYNE agrees to permit CEREDO and KENOVA to use its transmission lines for the transportation of wastewater to SANITARY BOARD'S sewage treatment plant and related facilities for treatment.

ARTICLE II  
OPERATION AND MAINTENANCE RESPONSIBILITIES

The SANITARY BOARD shall be responsible for the proper treatment and disposal of CEREDO'S and KENOVA'S sewage after it is discharged into the SANITARY BOARD facilities.

CEREDO, KENOVA and NORTHERN WAYNE further agree to operate and maintain their sewage collection facilities in a state of good repair during the term of this Agreement; and to pay all costs and

charges necessary for such maintenance and repair of their respective facilities and lines except as otherwise provided herein; and to promptly replace all defective facilities.

In the event any component of any flow metering system shall fail or become inoperable, the party responsible herein for the installation of such system, device or component shall make all appropriate repairs at its own individual expense.

ARTICLE III  
PROVISIONS FOR CONNECTION

1. Ceredo Connection Location

CEREDO sewage collection system and transmission line shall connect to NORTHERN WAYNE'S transmission lines at a single point located within Wayne County near the City of Huntington, West Virginia or at such other points as may be agreed upon by NORTHERN WAYNE and CEREDO.

2. Ownership of Facilities

(a) All sewage collection facilities built within Kenova, West Virginia by KENOVA shall remain under title and ownership of KENOVA.

(b) All sewage collection facilities built within Ceredo, West Virginia by CEREDO shall remain under title and ownership of CEREDO.

(c) The Meter Building and transmission lines built by NORTHERN WAYNE shall remain under title and ownership of NORTHERN WAYNE and no ownership interest or rights are hereby granted or

conveyed to CEREDO and KENOVA, nor is any future ownership interest or rights necessarily inferred under the provisions of this Agreement.

ARTICLE IV.  
CONSTRUCTION STANDARDS

CEREDO and KENOVA agree to design and construct all proposed sewage collection facilities necessary to serve their customers, and any additions thereto, in accordance with accepted standard of good engineering practice and the applicable DNR and WV Department of Health design standards in effect at such time.

ARTICLE V.  
REIMBURSEMENT CHARGES

In exchange of the rights, privileges and benefits of utilizing NORTHERN WAYNE'S transmission lines for transportation of the CEREDO and KENOVA sewage to SANITARY BOARD'S Facilities, CEREDO and KENOVA covenant and agree to pay NORTHERN WAYNE a lump sum reimbursement amount towards the local engineering and construction cost for the construction of those facilities that will be utilized by CEREDO, KENOVA and NORTHERN WAYNE based upon the following calculations of costs:

1. The share of cost for each party will be based on the design flow assigned each party. This will place the cost distribution as follows: NORTHERN WAYNE share based upon a flow rate of 1680 GPM as 42.2 percent of cost, CEREDO share at 520 GPM as 13.1 percent of cost and KENOVA share at 1780 GPM as 44.7 percent of cost.

2. Cost of the following items shall be used in determining the total cost:

Meter Building and all work between  
the meter building and tap to the  
Huntington system..... \$ 219,106

3. Cost of the following items shall be deducted from the total cost in paragraph 2 to arrive at the cost to be prorated. This cost shall be the responsibility of NORTHERN WAYNE.

a. 2 each 8" valves and concentric reducers..... \$ 3,828  
b. Flowmetering and interior piping..... \$ 19,546  
c. 16" pipe from 5' outside of building..... \$ 304

TOTAL NORTHERN WAYNE NON-PRORATED COST \$ 23,678

4. The following item shall be the responsibility of CEREDO and KENOVA as a non-prorated cost based on only flow from CEREDO and KENOVA:

a. 8" valve and 8 x 18 Reducer..... \$ 1,913

5. The total engineering and design cost for the meter building and related facilities shall be determined by applying the same percentage of engineering cost (\$156,028) to the construction cost for the project as a whole (\$1,606,000) to the project segment identified in this agreement. Engineering cost associated with the NORTHERN WAYNE force main and meter building project are:

Design Services..... \$ 75,960  
Bidding Phase..... \$ 9,565

Pre-construction Video.....	\$ 14,494
Construction Administration.....	\$ 14,627
Resident Project Representation.....	\$ 41,382
	<hr/>
Total Engineering Services.....	\$ 156,028

Engineering Services as Percentage of Construction: 9.7%  
(\$156,028 / 1,606,000)

6. CEREDO and KENOVA shall reimburse NORTHERN WAYNE in accordance with the following table as their share of the construction costs:

	CEREDO	KENOVA
a. Basic construction cost from Paragraph 2 less deductions from Paragraph 3	\$ 25,601	\$ 87,356
b. Additional cost from Paragraph 4	\$ 433	\$ 1,480
c. Sub-total	<hr/> \$ 26,034	<hr/> \$ 88,836
d. Engineering cost (9.7% of Sub-total)	\$ 2,525	\$ 8,617
e. Total reimbursement to NORTHERN WAYNE	<hr/> \$ 28,559	<hr/> \$ 97,453

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their appropriate officials in accordance with the proper corporate resolutions, as reference to the minutes of the meetings of said parties shall disclose, as of the day and year first above written.

ATTEST:

Stanley C. Finkle

CITY OF CEREDO, WEST VIRGINIA

By Joseph P. Napier  
Its Mayor

ATTEST:

Sheila A. Wheeler

CITY OF KENOVA, WEST VIRGINIA

By Gary Smith  
Its Mayor 9-18-91

ATTEST:

Steven L. Gorman

THE NORTHERN WAYNE COUNTY  
PUBLIC SERVICE DISTRICT

By Alman E. Wellman  
Its Chairman