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**CITY OF MOUNDSVILLE**  
**WATER REVENUE BONDS,**  
**SERIES 2005 A**  
**(UNITED STATES DEPARTMENT OF AGRICULTURE)**  
**AND**  
**SERIES 2005 B**  
**(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**DATE OF CLOSING: DECEMBER 21, 2005**

**BOND TRANSCRIPT**

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**CITY OF MOUNDSVILLE**

**Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture)  
and Series 2005 B (West Virginia Water Development Authority)**

**BOND TRANSCRIPT**

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**CITY OF MOUNDSVILLE**

**WATER REVENUE BONDS,  
SERIES 2005 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE),  
AND SERIES 2005 B  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**BOND ORDINANCE**

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CITY OF MOUNDSVILLE

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS SYSTEM REFUNDING BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF MOUNDSVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN \$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

THE COUNCIL OF THE CITY OF MOUNDSVILLE HEREBY ORDAINS:

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 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

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

B.     The Issuer has established the Moundsville Water Board (the "Board") pursuant to Article 145 of the Issuer's Administrative Code. The Board is charged with the responsibility of supervising and controlling the waterworks system of the Issuer.

C.     The Issuer presently owns and operates through its Board a public waterworks treatment and distribution 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 extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, consisting of the construction of a new water treatment plant, together with all appurtenant facilities (collectively, the "Project") (the existing public waterworks system of the Issuer, the Project and any further extensions, additions, betterments, and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

D.     The Issuer has heretofore temporarily financed (i) the current refunding of the Issuer's Water System Revenue Bonds, Series 1998 A, dated February 26, 1998, issued in the original aggregate principal amount of \$600,000; and (ii) the design of the Project by the issuance of the Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000, issued in the original aggregate principal amount of \$1,500,000, of which \$1,066,793.97 principal amount remains outstanding as of September 23, 2005 (the "Prior Notes").

E.     The Prior Notes were issued pursuant to an ordinance of the Issuer enacted on December 19, 2000 (the "Prior Notes Ordinance").

F.     It is deemed necessary and desirable for the Issuer to refund the Prior Notes to effect the release and termination of certain restrictions, conditions and limitations imposed in the Prior Notes Ordinance.

G.     The Issuer intends (i) to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"); and (ii) to refund the Prior Notes and permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the United States Department of Agriculture (the "Purchaser").

H. The estimated revenues to be derived in each year after completion of the Project and the refunding of the Prior Notes from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and payments into all funds and accounts and other payments provided for herein.

I. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of not more than \$20,000,000 in two series, being the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), in the aggregate principal amount of not more than \$7,000,000 (the "Series 2005 A Bonds"), and the Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), in the aggregate principal amount of not more than \$13,000,000 (the "Series 2005 B Bonds"), to refund the Prior Notes and permanently finance a portion of the costs of acquisition and construction of the Project (collectively, the "Series 2005 Bonds"). The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; the cost of refunding the Prior Notes; interest upon the Series 2005 Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in any Reserve Account (as hereinafter defined); 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 and expenses of the Purchaser or the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2005 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2005 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

K. It is in the best interests of the Issuer that its Series 2005 A Bonds be sold to the Purchaser pursuant to the terms and provisions of the Letter of Conditions (as hereinafter defined) and its Series 2005 B Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") by and between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority, approved hereby if not previously approved by ordinance of the Issuer.

L. Upon payment of the Prior Notes, there will be no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Series 2005 A Bonds and the Series 2005 B Bonds shall be issued on a parity with each other, with respect to liens, pledge and source of and security for payment.

M. The Issuer has complied with all requirements of West Virginia law, the Letter of Conditions and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and the issuance of the Series 2005 Bonds, or will have so complied prior to issuance of any thereof, including the obtaining of a certificate of convenience and necessity and approval of this financing 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 Series 2005 Bonds or such final order will not be subject to appeal.

N. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council (the "Council") as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2005 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and 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, collectively, Chapter 8, Article 19 and Chapter 22C, Article 1 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 and Registered Owner of the Series 2005 B Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor or City Manager of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Moundsville Water Board established by the Issuer pursuant to Article 145 of the Issuer's Administrative Code and charged with the responsibility to supervise and control the waterworks system of the Issuer.

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

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond 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.

"Bonds" means, collectively, the Series 2005 A Bonds, the Series 2005 B Bonds, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2005 A Bonds for all or a portion of the proceeds of the Series 2005 A Bonds from the Purchaser and the Series 2005 B Bonds for the proceeds representing the purchase price of the Series 2005 B Bonds from the Authority.

"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 Gwin, Dobson, and Foreman, Inc., Altoona, Pennsylvania, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931,

as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02I 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, which shall be a member of FDIC.

"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" means the council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the council as presently constituted.

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

"Grant" means, collectively, all grant monies received by the Issuer for the Project.

"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.

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

"Investment Property" means

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, 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.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means the City of Moundsville, a municipal corporation and political subdivision of the State of West Virginia, in Marshall County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Letter of Conditions" means, the Letter of Conditions of the Purchaser dated April 27, 2005, and all amendments thereto, providing for the purchase of the Series 2005 A Bonds from the Issuer by the Purchaser.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into between the Issuer and the Authority, providing for the purchase of the Series 2005 B Bonds from the Issuer by the Authority, the form 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 Series 2005 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in any Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2005 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 as defined in Section 148(b) of the Code, that is not a purpose investment.

"Notes Payment Fund" means the Notes Payment Fund established by the Prior Notes Ordinance.

"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, the Registrar and the Paying Agent (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, 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.

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

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

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent for the Series 2005 B Bonds by the Issuer in the Supplemental Resolution.

"Prior Notes Ordinance" means the ordinance authorizing issuance of the Waterworks System Refunding Bond Anticipation Notes, Series 2000.

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

"Program" means the 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 Project as described in Section 1.02B hereof.

"Purchaser" or "Government" means the United States Department of Agriculture and any successor thereof acting for and on behalf of the United States of America, which is expected to be the original purchaser and Registered Owner of the Series 2005 A Bonds.

"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, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the 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 Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

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

"Registrar" means the Bond Registrar.

"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.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2005 Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts.

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

"Series 2005 Bonds" means, collectively, the Series 2005 A Bonds and the Series 2005 B Bonds.

"Series 2005 Bonds Construction Trust Fund" means the Series 2005 Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2005 A Bonds" means the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), of the Issuer, authorized by this Ordinance.

"Series 2005 A Bonds Reserve Account" means the Series 2005 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2005 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2005 A Bonds in the then current or any succeeding year.

"Series 2005 B Bonds" means the Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), of the Issuer, authorized by this Ordinance.

"Series 2005 B Bonds Reserve Account" means the Series 2005 B Bonds Reserve Account established by Section 5.02 hereof.

"Series 2005 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2005 B Bonds in the then current or any succeeding year.

"Series 2005 B Bonds Sinking Fund" means the Series 2005 B 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 resolution authorizing the sale of the Series 2005 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2005 Bonds, 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, including, without limitation, the Reserve Accounts, the Series 2005 B Bonds Sinking Fund and the Renewal and Replacement Fund.

"System" means the existing waterworks system of the Issuer, as expanded and improved by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system after the completion of the Project.

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

Additional terms and phrases are defined in this Ordinance as they are used. 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 AND REFUNDING OF THE PRIOR NOTES

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, including the refunding of the Prior Notes, at an estimated cost of not to exceed \$23,568,300, 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 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Purchaser and the Authority.

The cost of the Project, including the refunding of the Prior Notes, is estimated not to exceed \$23,568,300 of which not to exceed \$7,000,000 will be obtained from proceeds of the Series 2005 A Bonds, not to exceed \$13,000,000 will be obtained from proceeds of the Series 2005 B Bonds, approximately \$1,400,000 will be obtained from proceeds of an Abandoned Mine Lands Grant and approximately \$2,168,300 will be obtained from proceeds of a State and Tribal Assistance Grant.

Section 2.02. Authorization of Refunding of the Prior Notes. There is hereby authorized and ordered the payment in full of the entire outstanding principal of and all accrued interest on the Prior Notes on the Closing Date. The cost of the refunding will be obtained from the proceeds of the Series 2005 A Bonds. Upon payment in full of the Prior Notes, the pledge of funds in favor of the holders of the Prior Notes imposed by the Prior Notes Ordinance and the monies in the funds and accounts created by the Prior Notes Ordinance pledged to the payment of the Prior Notes are hereby ordered terminated, discharged and released.

### 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 2005 Bonds, refunding the Prior Notes, funding reserve accounts for the Series 2005 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2005 A Bonds and Series 2005 B Bonds of the Issuer. The Series 2005 A Bonds shall be issued as a single bond, designated "Water Revenue Bond, Series 2005 A (United States Department of Agriculture)", in the principal amount of not more than \$7,000,000; and the Series 2005 B Bonds shall be issued as a single bond, designated "Water Revenue Bond, Series 2005 B (West Virginia Water Development Authority)," in the principal amount of not more than \$13,000,000, and each shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2005 Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds), refunding the Prior Notes, and capitalizing interest on the Series 2005 Bonds, if any, shall be deposited in or credited to the Series 2005 Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. A. The Series 2005 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable monthly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Series 2005 A Bond.

B. The Series 2005 B Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable 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 the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2005 B 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, if any, on the Series 2005 B Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2005 A Bonds shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances attached representing the aggregate principal amount of the Series 2005 A Bonds. The Series 2005 B Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of the Series 2005 B Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2005 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or 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 neither the Purchaser nor the Authority shall be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form, in such denominations, dated such dates and bear interest at such rates as determined by a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2005 Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2005 Bonds shall cease to be such officer of the Issuer before the Series 2005 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. Bond Registrar; Authentication and Registration. A. The Issuer shall be the Bond Registrar with respect to the Series 2005 A Bonds and will keep or cause to be kept at its office by its agent, sufficient books for the registration and transfer of the Series 2005 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2005 A Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2005 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2005 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and

beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust, and/or such other identifying number and information as may be required by law. The Series 2005 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2005 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

B. The Bond Registrar with respect to the Series 2005 B Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2005 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 2005 B Bonds shall be conclusive evidence that such Series 2005 B Bonds have been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2005 B 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 Series 2005 B Bonds issued hereunder. The provisions of this Section 3.04 relating to authentication shall not apply to the Series 2005 A Bonds, notwithstanding anything herein to the contrary.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2005 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 the Series 2005 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 the Series 2005 Bonds remain outstanding, the Bond Registrar for the Series 2005 Bonds shall keep and maintain books for the registration and transfer of such 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, all Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be 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 Series 2005 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 Series 2005 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. No holder or holders of the Series 2005 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2005 Bonds or the interest thereon.

Section 3.08.      Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all Series 2005 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09.      Delivery of Bonds. A. With respect to the Series 2005 A Bonds, the Mayor and City Manager are hereby authorized and directed to cause such Bonds, hereby awarded to the Purchaser pursuant to the Letter of Conditions, to be delivered to the Purchaser on the date of delivery of the Series 2005 A Bonds.

B. The Issuer shall execute and deliver the Series 2005 B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2005 B Bonds to the original purchasers upon receipt of the documents set forth below:

(1) If other than the Authority, a list of the names in which the Series 2005 B Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

(2) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2005 B Bonds to the original purchasers;

(3) An executed and certified copy of the Bond Legislation;

(4) An executed copy of the Loan Agreement; and

(5) The unqualified approving opinion of bond counsel on the Series 2005 B Bonds.

Section 3.10.      Form of Bonds. The text of the Series 2005 A Bonds and the Series 2005 B Bonds shall be in substantially the following respective forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2005 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MOUNDSVILLE  
WATER REVENUE BOND, SERIES 2005 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

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

No. \_\_\_\_\_

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

FOR VALUE RECEIVED, the CITY OF MOUNDSVILLE (the "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), plus interest on the unpaid principal balance at the rate of \_\_\_\_\_ % per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ \_\_\_\_\_, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment

of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for refunding the Prior Notes and financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the Gross Revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges,

if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions 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, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19 of the West Virginia Code, as amended (the "Act"), and an Ordinance of the Borrower duly enacted on \_\_\_\_\_, 20\_\_\_\_, and a Supplemental Resolution of the Borrower duly adopted on \_\_\_\_\_, 20\_\_\_\_, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED \_\_\_\_\_, 20\_\_\_\_, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_.

IN WITNESS WHEREOF, the CITY OF MOUNDSVILLE has caused this Bond to be executed by its Mayor and City Manager, and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, all as of the date hereinabove written.

[CORPORATE SEAL]

CITY OF MOUNDSVILLE  
(Name of Borrower)

\_\_\_\_\_  
(Signature of Executive Official)

Mayor  
(Title of Executive Official)

\_\_\_\_\_  
(Signature of Executive Official)

City Manager  
(Title of Executive Official)

Post Office Box E  
(P.O. Box No. or Street Address)

Moundsville, West Virginia 26041  
(City, State and Zip Code)

ATTEST:

\_\_\_\_\_  
(Signature of Attesting Official)

City Clerk  
(Title of Attesting Official)

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to \_\_\_\_\_  
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 Borrower with full power of substitution in the  
premises.

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

\_\_\_\_\_

In presence of:

\_\_\_\_\_

(FORM OF SERIES 2005 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MOUNDSVILLE  
WATER REVENUE BONDS,  
SERIES 2005 B  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. BR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF MOUNDSVILLE, a municipal corporation and political subdivision of the State of West Virginia in Marshall 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 October 1 of each year, commencing October 1, 200\_, as set forth on the "Debt Service Schedule" 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 therefore, and until payment of such installment, such interest shall be payable semiannually on April 1 and October 1 in each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_. In the event of a default, the amount of such default shall bear interest at the rate of this Bond, plus 2%, from the date of default to the date of payment thereof, and the defaulted interest shall be paid from the first deposits made by the Issuer to the Paying Agent.

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 The Huntington National Bank, 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 by and between the Issuer and the Authority, dated \_\_\_\_\_, 200\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system 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 of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2004, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2004 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED \_\_\_\_\_, 20\_\_\_\_, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2005 A BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Series 2005 A Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2005 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory 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 Gross Revenues, the moneys in the Series 2005 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for all operating expenses

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, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2005 A Bonds; provided however, that so long as there exists in the Series 2005 B 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 any other obligations outstanding on a parity with the Bonds, including the Series 2005 A 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 and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

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

All provisions of the Bond Legislation, ordinances 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 MOUNDSVILLE has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 2005.

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 B 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: \_\_\_\_\_, 2005.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE



Section 3.11. Sale of Bonds: Approval and Ratification of Execution of Loan Agreement. A. The Series 2005 A Bonds shall be sold to the Purchaser, pursuant to the terms and conditions of the Letter of Conditions. The Letter of Conditions, including all attachments, are hereby approved and incorporated into this Bond Legislation.

B. The Series 2005 B 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 and/or the City Manager are 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 is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Purchaser and the Authority a schedule, the forms of which will be provided by the Purchaser and the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## 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 hereby created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Series 2005 Bonds Construction Trust Fund.

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

The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2005 A Bonds Reserve Account;
- (2) Series 2005 B Bonds Sinking Fund; and
- (3) Series 2005 B 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 provided in this Bond Legislation. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and remit: (i) to the National Finance Office, commencing 30 days following the date of delivery of the Series 2005 A Bonds, the amount required to pay interest on the Series 2005 A Bonds; and (ii) to the Commission, commencing 7 months prior to the first date of payment of interest on the Series 2005 B Bonds, for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2005 B Bonds Sinking Fund, an amount equal to 1/6th of the amount of interest which will become due on the Series 2005 B 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 2005 B 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, 1 month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit: (i) to the National Finance Office, commencing 24 months following the date of delivery of the Series 2005 A Bonds, the amount required to amortize the principal of the Series 2005 A Bonds over the life of the bond issue; and (ii) to the Commission, commencing 13 months prior to the first date of payment of principal of the Series 2005 B Bonds, for deposit in the Series 2005 B Bonds Sinking Fund, an amount equal to 1/12th of the amount of principal which will mature and become due on the Series 2005 B Bonds on the next ensuing annual principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 B Bonds Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next annual principal payment date, the required amount of principal coming due on such date.

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

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2005 Bonds, (i) for deposit into the Series 2005 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 A Bonds Reserve Requirement, until the amount in the Series 2005 A Bonds Reserve Account equals the Series 2005 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2005 A Bonds Reserve Requirement; and (ii) for deposit into the Series 2005 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 B Bonds Reserve Requirement, until the amount in the Series 2005 B Bonds Reserve Account equals the Series 2005 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 B 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 2005 B Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in the Reserve Accounts (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 monies from the Renewal and Replacement Fund.

(6) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Monies in the Series 2005 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2005 A Bonds as the same shall come due, when other monies are insufficient therefor, and for no other purpose. Whenever the monies in the Series 2005 A Bonds Reserve Account shall be sufficient to prepay the Series 2005 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay, at the earliest practical date and in accordance with applicable provisions hereof, the Series 2005 A Bonds together with accrued interest thereon to such prepayment date.

Monies in the Series 2005 B Bonds Sinking Fund shall be used only for the purpose of paying principal of and interest on the Series 2005 B Bonds as the same shall become due. Monies in the Series 2005 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2005 B Bonds as the same shall come due, when other monies in the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2005 A Bonds Reserve Account (if fully funded), the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account (if fully funded) 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 Series 2005 Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the Series 2005 A Bonds Reserve Requirement or the Series 2005 B Bonds Reserve Requirement, respectively, shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2005 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Reserve Account or the Series 2005 B Bonds Sinking Fund, when the aggregate amount of funds therein 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 maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2005 A Bonds and the Series 2005 B Bonds in accordance with the respective principal amounts then Outstanding.

The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser and the Authority.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account created hereunder, and all amounts required for such funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Purchaser or the Authority at any time, the Issuer shall make the necessary arrangements whereby required payments into the said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) remit to the Purchaser and the Commission, as applicable, the required principal, interest and reserve account payments with respect to the Series 2005 Bonds and all such payments shall be remitted to the Purchaser and the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form, together with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. 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 the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such 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.

E. 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 their respective charges, fees and expenses then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by either the Authority at any time, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in any fund or account 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.

G. 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 Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

ARTICLE VI

BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. A. From the monies received from the sale of the Series 2005 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

(a) From the proceeds of the Series 2005 A Bonds, there shall first be deposited in the Notes Payment Fund the amount set forth in the Supplemental Resolution to pay in full the entire outstanding principal of and all accrued interest on the Prior Notes.

(b) Next, from the proceeds of the Series 2005 A Bonds, there shall be deposited with the Commission in the Series 2005 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2005 A Bonds Reserve Account.

(c) As the Issuer receives advances of the remaining monies derived from the sale of the Series 2005 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2005 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2005 A Bonds.

(d) After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2005 A Bonds shall be used as directed by the Purchaser.

B. From the monies received from the sale of the Series 2005 B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

(a) From the proceeds of the Series 2005 B Bonds, there shall first be deposited with the Commission in the Series 2005 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2005 B Bonds for the period commencing on the date of issuance of the Series 2005 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

(b) Next, from the proceeds of the Series 2005 B Bonds, there shall be deposited with the Commission in the Series 2005 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2005 B Bonds Reserve Account.

(c) The remaining monies derived from the sale of the Series 2005 B Bonds shall be deposited with the Depository Bank in the Series 2005 Bonds Construction

Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2005 B Bonds.

(d) After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2005 B Bonds shall be used as directed by the Authority.

Section 6.02. Disbursements From the Bond Construction Trust Fund.

A. The proceeds of the Series 2005 A Bonds in the Series 2005 Bonds Construction Trust Fund shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will transfer from proceeds of the Series 2005 A Bonds in the Series 2005 Bonds Construction Trust Fund and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Series 2005 A Bonds if there are not sufficient Gross Revenues to make such monthly payment.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any proceeds of the Series 2005 A Bonds remaining in the Series 2005 Bonds Construction Trust Fund shall be disposed of in accordance with the regulations of the Purchaser.

B. Except as provided in Section 6.01 hereof, disbursement of the proceeds of the Series 2005 B Bonds from the Series 2005 Bonds Construction Trust Fund shall be made only after submission to the Depository Bank of a certificate, signed by an authorized officer and the Consulting Engineers, stating that:

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

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Series 2005 Bonds Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Series 2005 Bonds 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 Series 2005 Bonds 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.

The Issuer shall expend all proceeds of the Series 2005 B Bonds within 3 years of the date of issuance of the Authority's bonds, the proceeds of which were used to make the loan to the Issuer.

Pending such application, moneys in the Series 2005 Bond Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions 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 Series 2005 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2005 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 the Series 2005 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2005 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2005 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all the Series 2005 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System. The Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2005 Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Order of the Public Service Commission of West Virginia in Case No. 05-0641-W-MA, entered on October 31, 2005, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2005 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2005 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will,

to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. Notwithstanding any other provision of this Section 7.05, so long as the Series 2005 A Bonds are outstanding, the System, or any portion thereof, may not be sold without the prior written consent of the Purchaser. So long as the Series 2005 B Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof; provided that, any sale or disposition of the properties of the System in excess of \$100,000 shall require the written consent of the Authority. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Purchaser and the Commission for the payment of principal of and interest on the Series 2005 Bonds. Any balance remaining after the payment of all the Series 2005 Bonds and interest thereon shall be remitted to the Issuer unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

Following repayment of the Series 2005 A Bonds in full or with the prior written consent of the Purchaser, 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 \$25,000, the Issuer shall, by resolution duly adopted, 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 \$25,000 but not in excess of \$100,000, the Issuer shall first, in writing, determine upon consultation with a professional engineer 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 in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. Payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such fund 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 \$100,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2005 Bonds. All obligations issued by the Issuer after the issuance of the Series 2005 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, pledge, and source of and security for payment from such revenues and in all other respects, to the Series 2005 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or 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.

The Issuer shall give the Purchaser and the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the System, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2005 Bonds pursuant to this Bond Legislation, without the prior written consent of the Purchaser and the Authority and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2005 Bonds.

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

So long as the Series 2005 A Bonds are outstanding, no Parity Bonds shall be issued at any time, unless there has been procured and filed with the City Clerk a written

statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

- (1) The Bonds Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The foregoing limitation may be waived or modified by the written consent of the Registered Owners of the Series 2005 A Bonds, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Series 2005 A Bonds are no longer Outstanding, the following parity requirement shall be met.

No Parity Bonds shall be issued at any time, unless there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants, 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, if any, 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, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenue 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 the rates enacted by the Issuer, the period for appeal of which has expired prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk 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 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.

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 theretofore or 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.

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 2005 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 2005 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.

So long as the Series 2005 B Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless (i) the Authority shall have received an opinion of bond counsel stating that the Series 2005 B Bonds shall be on a parity with such Parity Bonds, (ii) the Authority shall have received from the Independent Certified Public Accountants a certificate stating that the coverage and parity requirements of the Series 2005 B Bonds have been met, and (iii) the Parity Bonds must have a reserve account requirement of at least one (1) year's debt service, to be funded at closing or over ten (10) years.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Purchaser and the

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

The Issuer shall permit the Purchaser and the Authority or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

The accounting system for the System shall follow current generally accepted accounting principles 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 Purchaser and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of the Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System 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 in compliance with the applicable OMB Circular, or any successor thereto and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2005 Bonds and shall submit said report to the Purchaser and the Authority, or any other original purchaser of the Series 2005 Bonds. Such audit report submitted to the Purchaser and the Authority shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards, and, if there are, describes the instances of noncompliance, and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Purchaser and the Authority, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Purchaser and the Authority, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Purchaser with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2005 Bonds, equitable rates or charges for the use of and service rendered by the System shall be 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, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2005 Bonds and all

other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 Bonds; provided that, in the event that an amount equal to or in excess of the reserve requirement is on deposit respectively in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2005 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, if any, on the Series 2005 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 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 ordinances described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report The Issuer shall annually, at least 30 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 Purchaser and 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 a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Purchaser and the Authority, or to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Purchaser and the Authority and any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in

accordance with the approved plans, specifications and designs as submitted to the Purchaser and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Purchaser and the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

Section 7.12. 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 7.13. 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 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and 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 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.

Section 7.14. 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 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 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Bonds 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, including all machinery and equipment housed therein, 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 for the other purposes provided herein for the 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 Purchaser, 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 Purchaser, 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, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

(7) PROVIDED, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2005 Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Purchaser and the Authority, and the Issuer shall verify such insurance prior to commencement of construction. 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 7.16. Connections. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the system to connect thereto.

Section 7.17. Completion of Project; Permits and OrdersThe Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards. The Issuer shall take all steps necessary to maintain and operate the System and make the necessary replacements due to normal wear and tear so long as the Series 2005 Bonds are outstanding.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Letter of Conditions, Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Letter of Conditions, the Loan Agreement, the Act and this Bond Legislation. The Issuer shall also comply with all applicable laws, rules and regulations issued by the Purchaser and the Authority, or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Securities Laws Compliance. The Issuer will annually provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.20. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2005 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2005 Bonds.

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2005 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Purchaser and the Authority for written approval. The Issuer shall obtain the written approval of the Purchaser and the Authority before expending any proceeds of the Series 2005 Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Purchaser and the Authority before expending any proceeds of the Series 2005 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Purchaser and the Authority in any press release, publication, program, bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

### INVESTMENT OF FUNDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies 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 Depository Bank, or such other bank or national banking association 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 Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if 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 Bonds from gross income for federal income tax purposes.

Section 8.02.      Certificate as to the Use of Proceeds . The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2005 B Bonds as a condition to issuance of the Series 2005 B Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2005 B Bonds as may be necessary in order to maintain the status of the Series 2005 B Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer

to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2005 B Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, from which the proceeds of the Series 2005 B Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2005 B Bonds and any additional information requested by the Authority.

Section 8.03.      Investment Information Provided to Authority.      The Issuer shall annually provide the Authority with bank statements and all investment information for the funds and accounts related to the proceeds of the Series 2005 B Bonds and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2005 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any series of the Series 2005 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 Series 2005 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2005 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, the Registrar, the Paying Agent 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.

Notwithstanding anything herein to the contrary, if default occurs in the due and punctual payment of the principal of or interest on any series of the Series 2005 Bonds, it shall constitute an "Event of Default" with respect to the other series of the Series 2005 Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act, the Loan Agreement 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 Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2005 A Bonds and the Series 2005 B Bonds shall be on a parity with each other.

Section 9.03.      Appointment of Receiver Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, 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 completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection

of both the Issuer and Registered Owners 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 the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds; Series 2005 A Bonds Not Subject to Defeasance. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2005 Bonds, the principal of, redemption premium and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation and the Loan Agreement, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2005 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 Series 2005 Bonds from gross income for federal income tax purposes.

Except through direct payment to the Holder of the Series 2005 A Bonds, of the outstanding principal of and accrued interest on the Series 2005 A Bonds, the Issuer may not defease the Series 2005 A Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 10.02. Advance Refunding of Series 2005 B Bonds. So long as the Authority shall be the registered owner of the Series 2005 B Bonds, the Issuer may advance refund the Series 2005 B Bonds during the first 15 years following the issuance thereof at a premium of 1% over the premium, if any, to be paid by the Authority by depositing sufficient funds (principal, interest and premium, if any) at the Commission to redeem the Series 2005 B Bonds on the first available call date; provided that, after the first 15 years, the Issuer may prepay the Series 2005 B Bonds at par, plus interest payable to the next available call date, at any time, all as set forth in the Loan Agreement.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2005 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2005 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2005 Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2005 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Bonds 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 as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2005 Bonds 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 Series 2005 Bonds, 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 or the Series 2005 Bonds.

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

Section 11.05. Notices. All notices to be sent to the Issuer, the Purchaser or the Authority shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

City of Moundsville  
P. O. Box E  
Moundsville, West Virginia 26041  
Attention: Mayor

PURCHASER:

United States Department of Agriculture  
Rural Utilities Service  
425 Juliana Street  
P.O. Box 303  
Parkersburg, West Virginia 26102

AUTHORITY:

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571  
Attention: Director

Section 11.06. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, this Section shall not be applicable to the Loan Agreement or the Loan Resolution (Form FmHA 442-47).

Section 11.07. 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 Manager, City Clerk 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 11.08. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

Section 11.09. Statutory Notice and Public Hearing Upon adoption hereof, an abstract of this Ordinance 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 Moundsville Daily Echo, a newspaper published and of general circulation in the City of Moundsville, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the 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: - October 4, 2005  
Passed on Second Reading: - October 18, 2005  
Passed on Final Reading  
Following Public  
Hearing: - November 1, 2005

  
\_\_\_\_\_  
Vice Mayor

  
\_\_\_\_\_  
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

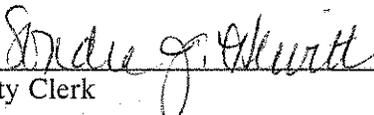
  
\_\_\_\_\_  
City Attorney

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF MOUNDSVILLE on the 1<sup>st</sup> day of November, 2005.

Dated: December 21, 2005.

[SEAL]

  
\_\_\_\_\_  
City Clerk

10/01/05  
636290.00001

**EXHIBIT A**

**Loan Agreement**

CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture) and  
Series 2005 B (West Virginia Water Development Authority)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF MOUNDSVILLE; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO THE SERIES 2005 B BONDS; AUTHORIZING AND APPROVING THE SALE OF THE SERIES 2005 A BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE SERIES 2005 B BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of Moundsville (the "Issuer") has duly and officially enacted a bond ordinance, effective November 1, 2005 (the "Bond Ordinance" or the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS SYSTEM REFUNDING BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF MOUNDSVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN AGGREGATE

PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN \$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) and Series 2005 B (West Virginia Water Development Authority), of the Issuer (collectively, the "Bonds" and individually, the "Series 2005 A Bonds" and the "Series 2005 B Bonds"), in the respective aggregate principal amounts not to exceed \$7,000,000 and \$13,000,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2005 B Bonds, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amounts, dates, maturity dates, redemption provisions, 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 2005 A Bonds are proposed to be purchased by the United States Department of Agriculture, acting for and on behalf of the United States of America (the "Purchaser") pursuant to a Letter of Conditions, and all amendments, and the Series 2005 B Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

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

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

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 the following bonds of the Issuer:

A. Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), of the Issuer, originally represented by a single Bond, numbered AR-1 in the principal amount of \$4,900,000. The Series 2005 A Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of 4.25% per annum, interest only payable in monthly installments for the first 24 months commencing 30 days following delivery of the Series 2005 A Bonds and continuing on the corresponding day of each month and, thereafter, principal and interest are payable in monthly installments of \$21,707 on the corresponding day of each month, except that the final installment shall be paid at the end of forty years from the date of the Series 2005 A Bonds, in the sum of the unpaid principal and interest due on the date thereof, except that prepayments may be made as hereinafter provided and as provided in the Series 2005 A Bonds, all such payments to be made at the National Finance Office, St. Louis, Missouri 63103, or at such other place as the Purchaser may designate after issuance of the Series 2005 A Bonds. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer.

B. Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$ 9,745,000. The Series 2005 B Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2035, and shall bear interest at the

rate of 5.2% per annum, payable semi-annually on April 1 and October 1 of each year, commencing April 1, 2006. The principal of the Series 2005 B Bonds shall be payable in annual installments on October 1 of each year, commencing October 1, 2008, and maturing October 1, 2035, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2005 B Bonds. The Series 2005 B Bonds 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, so long as the Authority shall be the registered owner of the Series 2005 B Bonds.

Section 2. Section 5.01 of the Bond Ordinance provides for the establishment at the Depository Bank of the Series 2005 Bonds Construction Trust Fund. Section 5.01 of the Bond Ordinance is hereby supplemented to provide for the establishment of two sub-accounts within the Series 2005 Bonds Construction Trust Fund which shall be entitled "Series 2005 A Bonds Construction Trust Fund" and "Series 2005 B Bonds Construction Trust Fund".

Section 6.01 of the Bond Ordinance is hereby supplemented to provide that the proceeds of the Series 2005 A Bonds shall be deposited upon receipt in the Series 2005 A Bonds Construction Trust Fund and the proceeds of the Series 2005 B Bonds shall be deposited at closing in the Series 2005 B Bonds Construction Trust Fund.

The Issuer shall provide the Depository Bank with written instructions with respect to payments from the Series 2005 A Bonds Construction Trust Fund and the Series 2005 B Bonds Construction Trust Fund.

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

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor and/or the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the Authority. The Issuer does hereby authorize, approve and accept the Letter of Conditions, and all amendments thereto, 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 The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2005 B Bonds under the Bond Ordinance 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 the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Series 2005 B Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate Progressive Bank, N.A., Wheeling, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2005 A Bonds proceeds in the amount of \$1,097,376.94 shall be deposited in the Notes Payment Fund for payment to Progressive Bank, N.A., Wheeling, West Virginia, to pay in full the entire outstanding principal of and all accrued interest on the Prior Notes at closing.

Section 8. The remaining proceeds of the Series 2005 A Bonds shall be deposited in or credited to the Series 2005 A Bonds Construction Trust Fund as received from the Purchaser from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 2005 A Bonds.

Section 9. Series 2005 B Bonds proceeds in the amount of \$0 shall be deposited in the Series 2005 B Bonds Sinking Fund, as capitalized interest.

Section 10. Series 2005 B Bonds proceeds in the amount of \$0 shall be deposited in the Series 2005 B Bonds Reserve Account.

Section 11. The balance of the proceeds of the Series 2005 B Bonds shall be deposited in or credited to the Series 2005 B Bonds Construction Trust Fund for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 12. The Mayor, Vice Mayor, City Manager, and City Clerk are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Ordinance approved and provided for, to the end that the Series 2005 A Bonds may be delivered on or about December 21, 2005, to the Purchaser pursuant

to the Letter of Conditions, and the Series 2005 B Bonds may be delivered on or about December 21, 2005, to the Authority pursuant to the Loan Agreement.

Section 13. The refunding of the Prior Notes, the acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 14. The Issuer hereby determines that it is in the best interest of the Issuer to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, subject to any limitation of the Purchaser and the Authority with respect of the proceeds of the Bonds, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Monies in the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 15. The Issuer covenants that it will take all actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds.

Section 16. The Issuer hereby ratifies, approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 17. The Issuer hereby approves payment of all invoices and bills for the Project which have been received to date from the proceeds of the Bonds.

Section 18. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 13<sup>th</sup> day of December, 2005.

CITY OF MOUNDSVILLE



Vice Mayor



City Manager

APPROVED AS TO FORM AND CORRECTNESS:



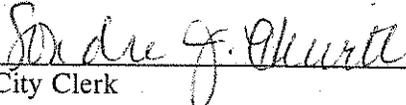
City Attorney

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the CITY OF MOUNDSVILLE on this 13<sup>th</sup> day of December, 2005.

Dated: December 21, 2005.

[SEAL]

  
\_\_\_\_\_  
City Clerk

12/12/05  
636290.00001

  
**United States Department of Agriculture**  
**Rural Development**  
**Parkersburg Area Office**

November 29, 2005

Allen Hendershot, City Manager  
City of Moundsville  
P.O. Box E  
Moundsville, WV 26041

Dear Mr. Hendershot:

The pre-closing for the City's Rural Utilities Service (RUS) loan will be held on December 19, 2005, at 10:00 AM at the City's Water Department Office in Moundsville, West Virginia. The preconstruction conference will follow at 11:00 AM. The official loan closing date for the City's Water Treatment Plant Project will be December 21, 2005.

Reference is made to our Letter of Conditions dated April 27, 2005. All of the requirements of these letters must be met and in addition, the loan must be closed in accordance with RUS Instruction 1780 and "Closing Guidelines for Community Facilities Loans to Public Bodies."

The RUS loan of \$4,900,000 will be closed utilizing an interest rate of 4.25%, resulting in payments of \$21,707 per month. The City will establish and fund monthly a debt service reserve account which equals 10% of the monthly payments until you accumulate the equivalent of one annual installment on the loans. This account must be established with the West Virginia Municipal Bond Commission.

The following items should be submitted to our office as soon as possible but not later than December 12, 2005:

1. The City's engineer must provide a resume of the proposed inspector(s).
2. The City must provide a letter accepting the proposed inspector(s).
3. The City must provide evidence that it has acquired insurance and bond coverage in accordance with Item 11 of the Letter of Conditions. The position fidelity coverage must be increased to at least the amount of the estimated highest monthly construction drawdown. Once construction is complete, the position fidelity coverage may be decreased to not less than the amount of one annual installment on your RUS loan.
4. The City must furnish evidence that it provides State Workers' Compensation Insurance. A certificate of good standing will be satisfactory.
5. An advance copy of the first drawdown.

P.O. Box 303 Parkersburg, WV 26102-0303  
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Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD)

6. Evidence of the Abandoned Mine Lands and Reclamation (AML) funding award/binding commitment.
7. A payoff for December 21, 2005 from Progressive Bank.

On the day of preclosing, the following documents must be provided:

1. The City's attorney will need to provide Form RD 442-22 "Opinion of Counsel Relative to Rights of Way," showing no exceptions. This form should be dated December 21, 2005.
2. The City's attorney must furnish a Form RD 1927-10 "Final Title Opinion," on all property owned by the City and pertaining to the water system. A single final title opinion may be provided if it includes an attachment which adequately addresses each of the parcels identified in the preliminary title opinions. The opinion should be dated December 21, 2005.
3. The City must furnish evidence that the West Virginia Public Service Commission has approved the project's proposed financing.
4. The City must furnish evidence that the West Virginia Infrastructure Jobs Development Council has approved the project.

If you have any questions regarding these or any other matters pertaining to your loan, please contact our office at your earliest convenience.

Sincerely,

VIRGINIA M. McDONALD  
Rural Development Specialist

Enclosure

cc: State Director  
USDA-Rural Development  
Morgantown, WV

Thomas P. Boland, P.E.  
Gwin, Dobson & Foreman  
Altoona, PA

John L. Allen, Esquire  
Wheeling, WV

James V. Kelsh, Esquire  
Charleston, WV

John Stump, Esquire  
Steptoe & Johnson, PLLC  
Charleston, WV

Vince Collins, Esquire  
Steptoe & Johnson, PLLC  
Morgantown, WV

Tom Aman, Esquire.  
Steptoe & Johnson, PLLC  
Clarksburg, WV

**CLOSING GUIDELINES FOR  
COMMUNITY FACILITY LOANS TO PUBLIC BODIES**

At or before the closing for the financing, the following conditions must be satisfied:

1. **General Requirements.** There must be full compliance with all requirements specified in (a) applicable Farmers Home Administration Instructions, (b) correspondence from OGC, (c) any applicable correspondence from the Administrator's office, (d) FmHA letter of conditions, (e) clearinghouse comments, and (f) any state office memorandum of approval.
2. **Loan Resolution.** Confirm that the Applicant has duly adopted the fully executed Form FmHA 1942-47, Loan Resolution (Public Bodies).
3. **Grant Agreement.** In the event that a grant is also to be made to the Applicant, then the grant may be closed in accordance with FmHA Instructions provided that these Closing Instructions have also been complied with and duly authorized officials of the Applicant have fully executed Form FmHA 1942-31, Grant Agreement.
4. **Civil Rights.** Confirm that the following fully executed civil rights forms are in the docket:
  - a. Form RD 400-1, Equal Opportunity Agreement.
  - b. Form RD 400-4, Assurance Agreement.
  - c. Form FmHA 400-8, Compliance Review (Pre-loan closing).
5. **Environmental Impact.** Confirm that a completed and executed Environmental Impact Assessment, is in the docket. If the Assessment indicates that an Environmental Impact Statement must be filed, this must be accomplished prior to loan closing.
6. **Clearinghouse Comments.** Confirm that A-95 approvals have been received from both state and regional clearinghouses. Note any comments received and confirm that the Applicant intends to comply with such comments. If the Applicant expresses a contrary intention, the State Office should be notified immediately in detail. The State Office should consult OGC with respect to the legal ramification of any such noncompliance.
7. **Specimen Bond(s).** Prior to closing, confirm that the terms of the specimen bond(s) are consistent with FmHA Instructions, the FmHA Letter of Conditions and other obligating documents. Amortization schedules and maturity dates should be checked very carefully.
8. **Certification of Payment.** If FmHA loan proceeds will be used to retire interim indebtedness, the Applicant must provide FmHA with written statements in accordance with FmHA Instruction 1942-A, 1942.17(n)(2) [7 C.F.R. 1942.17].

9. Examination of Executed Bond(s). The Rural Development Specialist should examine the executed original Bond(s) at the closing to determine the following:
- a. That the repayment and other terms of the Bond(s) are consistent with the FmHA Letter of Conditions and obligating documents.
  - b. That the Bond(s) has been fully executed by the proper officials of the Applicant as recited on the face of the Bond(s).
  - c. That the persons executing the Bond(s) are officials of the Applicant as shown on the General Incumbency Certificate.
  - d. That the Applicant's seal is on the Bond(s).
  - e. That any authentication certificate contained on the Bond(s) has been properly executed.
  - f. That the Bond(s) is fully registered in the name of the United States of America/Farmers Home Administration.
  - g. That the place of payment shown on the face of the Bond is correct and administratively acceptable.
  - h. That the Bond(s) is dated the date of closing.
10. Dates, Seals and Signatures. All certifications and opinions furnished by the Applicant, Local Counsel or Bond Counsel should be dated as of the date of Loan Closing. Wherever appropriate, the seal of the Applicant should be impressed on materials being furnished by the Applicant. Bond transcript items "b," "i," "k," and "m" listed below should be manually-executed originals. For the remaining Bond transcript documents, an original manual attestation by the Applicant's Clerk or Secretary will suffice.
11. Bond Transcript. A bond transcript should be compiled by Bond Counsel in accordance with the requirements contained in FmHA Instructions 1942-A, 1942.19(c) [7 C.F.R. 1942.19]. Confirm that the bond transcript contains each of the following items:
- a. Certified copies of all organizational documents, i.e., special acts, charter, by-laws.
  - b. General Incumbency Certificate (may sometimes be referred to as Signature Certificate).
  - c. Certified copies of minutes or excerpts therefrom of all meetings of the Applicant's governing body at which action was taken in connection with the authorization and issuance of the Bond(s).
  - d. Certified copies of documents evidencing that the Applicant has complied fully with all statutory requirements incident to the calling and holding of a favorable bond election unless Bond Counsel advises you this is not applicable.

- e. Certified documents evidencing that the Applicant has complied fully with all statutory requirements incident to advertising the consideration and/or adoption of the bond ordinance unless Bond Counsel advises you that this is not applicable.
- f. Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvements, if such documents are not included in the minutes furnished.
- g. Copies of official Notice of Sale and Affidavit of Publication of Notice of Sale unless Bond Counsel advises you that this is not applicable.
- h. Specimen Bond (of each denomination), with any attached coupons.
- i. No Litigation Certificate of Local Counsel (See Item 12 below).
- j. Certified copies of resolutions or other documents pertaining to the award of the Bond(s).
- k. Non-Arbitrage Certificate.
- l. Any additional or supporting documents required by Bond Counsel.
- m. Preliminary approving opinion, if any, and final unqualified approving opinion of Bond Counsel, including opinion regarding interest on bonds being exempt from Federal and any State income taxes.

Any omissions from the Bond transcript should be supplied by the Rural Development Specialist with the assistance of the Applicant and Bond Counsel. Obviously, certain of the documents listed above will normally be delivered prior to the closing.

- 12. Attorney's No-Litigation Certificate. Local Counsel should deliver a manually-executed original attorney's no-litigation certificate dated the date of closing.
- 13. Evidence of Title. In all cases, confirm that Local Counsel has supplied FmHA with his or her title opinion regarding the sites for any project structures such as treatment plants and community buildings. The opinion should be on Form FmHA 1927-10 with any changes necessary to reflect the circumstances of this financing. In the case of utility-type financings, confirm that executed Form FmHA 442-21 and 442-22 concerning rights-of-way are also in the docket. Any title exceptions should either be removed prior to closing or be specifically cleared through OGC.
- 14. Additional Instructions. OGC will normally issue additional closing instructions on a case-by-case basis containing special requirements for specific loans. The District Director should review the Closing Instructions prepared by OGC relating to the specific case and close the loan in accordance with those instructions.



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

April 27, 2005

The Honorable Ralph DiRemigio  
Mayor, City of Moundsville  
P.O. Box E  
Moundsville, WV 26041

Dear Mayor DiRemigio:

This letter, with Attachments 1 through 13 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$4,900,000 and other funding in the amount of \$14,441,800, for a total project cost of \$19,341,800. The other funding is planned in the form of a loan from the West Virginia Water Development Authority and grants from the Environmental Protection Agency and the West Virginia Office of Abandoned Mine Lands.

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

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

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

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- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 2003) (Accountant Copy)
- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - Sample Credit Agreement (Applicant Copy)
- Attachment No. 12 - RUS Policy regarding Use of Remaining Funds
- Attachment No. 13 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.25% interest rate and a monthly amortization factor of 0.00443, which provides for a monthly payment of \$21,707.00. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of equal priority with the proposed West Virginia Water Development Authority bond issue, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27 which is mentioned later.
3. Users - This conditional commitment is based upon you providing evidence that there will be at least 4,571 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to the City's existing water system which is to be partially replaced by the new system, at the time you request authorization to advertise the project for construction bids.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and currently using the system.

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. 1910-1-FA, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.
6. Legal Services - It will be necessary for you to obtain the services of a local attorney. For your convenience a "Rural Utilities Service Legal Services Agreement" is enclosed for your use.
7. Accounting Services - It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
  - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
  - b. Prior to loan/grant closing, your accountant must certify that the accounts and records as required by your bond ordinance have been established and are operational.

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

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

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

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

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

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

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

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

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

- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
- b. Workers' Compensation - In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. During the construction phase of your project, this maximum amount will be much greater than normal; therefore, it is our recommendation that you temporarily increase your coverage to the amount of the estimated highest monthly construction drawdown. Once construction is complete, you may decrease the amount of your coverage. Please note that the cost of the temporary increase in coverage is an eligible project cost.

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

- d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:

- (1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
- (2) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or

mudslide prone areas will not receive financial assistance where flood insurance is not available.

- e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

- a. The contract documents should consist of the following:

- (1) EJCDC Document No. 1910-8-A-1-FA, 1997 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. 1910-8-FA, "Standard General Conditions of the Construction Contract – Funding Agency Edition" and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.
- (2) "RUS Supplemental General Conditions."

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

- b. The contract documents must provide, as a minimum, the following insurance:

- (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the City and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
- (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
- (3) Workers' Compensation - In accordance with applicable State laws.

- c. The contract documents and final plans and specifications must be submitted to RUS for approval.

- d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. State Prevailing Wage Law - You should ensure that all requirements of Article 5A of the West Virginia State Prevailing Wage Law, "Wages for Construction of Public Improvements" are met during construction of the project.
14. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No.13).
15. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your City, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Non-Profits – Interest earned on grant funds in excess of \$250 per year will be remitted to RUS annually as required in 7 CFR 3019.

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

The City will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with 31 CFR 202.

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

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

Form RD 1940-1 - "Request for Obligation of Funds"  
RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"  
Form RD 400-1 - "Equal Opportunity Agreement"  
Form RD 400-4 - "Assurance Agreement"  
Form AD 1047 - "Certification Regarding Debarment - Primary"  
Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"

FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"  
Certification of Compliance  
Form RD 1942-46, "Letter of Intent to Meet Conditions"

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

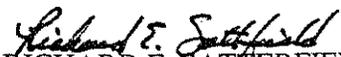
The "RUS Policy Regarding Use of Remaining Funds" is attached for your information and use (Attachment No. 12). This policy should be adhered to when addressing the use of bid underrun funds, as well as any funds remaining after project construction is complete.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS loan funds and would be applied as an extra payment toward the loan balance.

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

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

Sincerely yours,

  
RICHARD E. SATTERFIELD  
Acting State Director

Enclosures

cc: Rural Development Specialist  
Parkersburg, WV

Thomas L. Dobbs, CPA  
Moundsville, WV

John L. Allen, Esquire  
Wheeling, WV

Walt Ivey, P.E.  
West Virginia Bureau of Public Health  
Charleston, WV

Charles Miller, Acting Assistant Chief  
West Virginia Office of Abandoned Mine Lands  
Nitro, WV

Thomas Boland, P.E.  
Gwin, Dobson, and Foreman, Inc.  
Altoona, PA

John C. Stump, Esquire  
Steptoe and Johnson  
Charleston, WV

Daniel B. Yonkosky, Director  
West Virginia Water Development Authority  
Charleston, WV

Attachment No. 1 to Letter of Conditions  
 For: City of Moundsville  
 Date: April 27, 2005

Project Construction Budget

<u>PROJECT COST</u>	<u>AML GRANT</u>	<u>STAG GRANT</u>	<u>WDA LOAN</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
REFINANCE				\$ 500,000	\$ 500,000
CONSTRUCTION	\$ 1,400,000	\$ 2,168,300	\$ 8,020,700	\$ 3,276,000	\$ 14,865,000
CONST. CONTINGENCY			\$ 527,700	\$ 215,550	\$ 743,250
LEGAL FEES				\$ 32,750	\$ 32,750
BOND COUNSEL			\$ 31,000	\$ 24,500	\$ 55,500
ENGINEERING FEES			\$ 781,000	\$ 319,000	\$ 1,100,000
Basic - \$					
Insp. - \$					
Special - \$					
INTEREST (RUS)				\$ 441,000	\$ 441,000
INTEREST (WDA)			\$ 1,302,000		\$ 1,302,000
PERMITS				\$ 5,000	\$ 5,000
PROJECT CONTG.			\$ 211,100	\$ 86,200	\$ 297,300
<b>TOTAL</b>	<b>\$ 1,400,000</b>	<b>\$ 2,168,300</b>	<b>\$10,873,500</b>	<b>\$ 4,900,000</b>	<b>\$ 19,341,800</b>

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

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		Have	3
	DUNS Number	1		Applicant			3
	CAIVRS Number	1		RUS			CPAP Form
	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant		Have	3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		Have	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney		Have	5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney		Have	2
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant			1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		Have	1
EJCDC No. 1910-1-FA	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		Have	6

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney		Have	5
	Site Visit		S.I. 1780-2	RUS		Have	3
	Processing Conference	1	1780.39(a)	RUS		Have	3
	Environmental Report	2	1794	Applicant		Have	3
	Environmental Assessment	2	1794	RUS/ Engineer		Have	3
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant		Have	3
	Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		Have
Staff Engineer PER Review		1	1780.33(c)	RUS		Have	3
Bill Analysis for existing system(s)		2	1780.33(c)	Applicant/ Engineer		Have	8
Rate Tariff		2	1780.33	Applicant		Have	8
Applicant's IRS Tax Number(TIN)		1	1780.33(g)	Applicant		Have	3
Agency Determination on the Availability of "Other Credit" with Documentation		1	1780.7(d)	RUS		Have	3
Documentation on Service Area		1	1780.11	RUS		Have	3
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		Have	1

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Letter of Conditions	7	1780.41 (a)(5)	RUS			3
Exhibit A / A-1	Certifications Regarding Lobbying	2	1780.33(h)	Applicant			2
CPAP Form	Project Information	3	1780.41(a)	RUS			1
CPAP Form	Loan Determination	3	1780.41(a)	RUS			2
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant			2
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant			3
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant			5
	Relationships/ Associations with Agency Employees	1	1780.1(f)	RUS			3
RD 1910-11	Applicant Certification, Federal Collection Policies	1	1780.33(h)	Applicant			3
Bulletin 1780-27	Loan Resolution	1	1780.45 (a)(2)	Applicant			5
RD 400-1	Equal Opportunity Agreement	1	1901-E	Applicant			6
RD 400-4	Assurance Agreement	1	1901-E	Applicant			3
	Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant		Have	5
	Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
Lender Agreement/ Bulletin 1780-10/ 1780-10a	Interim Financing Documentation	1	1780.39(d)	Applicant/ RUS			1
	DOH Permit	1	1780.15(d)	Applicant			6
	Railroad Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Corps of Engineers Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Evidence of "Other Funds"	1	1780.44(f)	Applicant			2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Documentation Relative to Health or Sanitary Hazards	1	1780.1 (c)(1) 1780.13 (b)(1)	RUS/State Health Department			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
	Flood Insurance Policy	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

**LOAN RESOLUTION**  
(Public Bodies)

**COPY**

A RESOLUTION OF THE City Council

OF THE City of Moundsville

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

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

WHEREAS, it is necessary for the City of Moundsville  
(Public Body)

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

FOUR MILLION NINE HUNDRED THOUSAND AND XX / 100 DOLLARS (\$4,900,000.00)

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

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

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

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

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as City Clerk of the City of Moundsville

hereby certify that the City Council of such Association is composed of

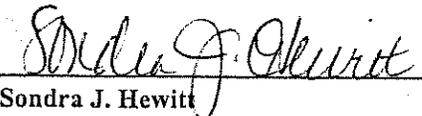
6 members, of whom 5 constituting a quorum, were present at a meeting thereof duly called and

held on the 3rd day of August, 2005; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of December 21, 2005,

the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 21st day of December, 2005

  
Sondra J. Hewitt

Title City Clerk

WDA-LP IV  
(8/11/05)

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 MOUNDSVILLE  
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 22C, Article 1 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 be financed, 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 acquire, construct, improve, operate and maintain a water development project, as defined by the Act, and to finance the cost of acquisition and construction of 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, known as Loan Program IV (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 bonds," "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 qualified 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 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.8 "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.

1.9 "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.

1.10 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 Act.

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

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

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

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

2.6 The Governmental Agency agrees that it will permit the Authority and its agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal

to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or shall have verified such bonds prior to commencement of construction.

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 and shall verify or shall have verified such insurance prior to commencement of construction. 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 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 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 shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State 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.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

### 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 delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the 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 General Resolution, and that such refinancing will not cause a violation of any covenant, representation or agreement of the Authority contained in the General Resolution or any tax

or arbitrage certificate with respect to the exclusion of the interest on the Authority's water development revenue bonds from gross income of the holders 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") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority 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), with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been

entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority 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 or such later date as is agreed to in writing 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 from the Program 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 purchase the Local Bonds unless and until it has available funds sufficient to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, 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. Additionally, the Governmental Agency recognizes that the Authority will purchase the Local Bonds only with funds from the Program and not with funds from any other loan programs of the Authority.

#### 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 adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Authority:

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document, as reflected on the Schedule X attached hereto, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds 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 for the Local Bonds (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 or surety or other security instrument) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) or 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; and

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

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

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants; provided that, any sale or disposition of the properties of the System in excess of \$100,000 shall require the written consent of the Authority;

(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 and with the prior written consent of the Authority; provided that, the Authority shall have received a bond counsel parity opinion and an accountant certificate stating that the coverage and parity requirements have been met and the parity bonds must have a reserve account requirement of at least 1 year's debt service, to be funded at closing or over 10 years;

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

(xii) That the Governmental Agency shall annually, at least 30 days prior to each new fiscal year, adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority 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) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may advance refund its Local Bonds during the first 15 years at a premium of 1% over the premium, if any, to be paid by the Authority by depositing sufficient funds (principal, interest and premium, if any,) at the Commission (as hereinafter defined) to redeem such Local Bonds on the first available call date; provided that, after the first 15 years, the Governmental Agency may prepay its Local Bonds at par, plus interest payable to the next available call date, at any time.

(xvi) That, to the full extent permitted by applicable law and the rules and regulations of the PSC, the Governmental Agency shall 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;

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, 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 annually provide the Authority with bank statements and all investment information for the funds and accounts related to the proceeds of the Local Bonds;

(xix) That the Governmental Agency shall annually provide the Authority with financial information and such other information as is necessary for the Authority to meet its ongoing disclosure requirements;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineers in the form attached hereto as Exhibit A, 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, the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

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

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

(xxiii) That the Governmental Agency shall obtain the written approval of the Authority before expending any proceeds of the Local Bonds available due to bid/construction/project underruns, including the "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineers;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Authority copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by 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 The principal payments of the Loan shall be made by the Commission annually on the days and in the years provided in Schedule X hereto. The interest payments on the Loan shall be made by the Commission semiannually as provided in said Schedule X.

4.4 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.

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

4.6 The Governmental Agency agrees to 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.

4.7 Unless otherwise agreed by the Authority, 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.

4.8 As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency may redeem its Local Bonds in accordance with the conditions set forth in Section 4.1 (b)(xv). The Authority hereby agrees that it will not refund the water development revenue bonds which provided the funds for the Local Bonds without the prior written consent of each of the affected Governmental Agencies.

## 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 and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

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

5.3 In the event the Governmental Agency defaults in any payment to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, plus 2%, from the date of the default until the date of the payment thereof. The defaulted interest shall be paid from the first deposits made by the Governmental Agency to the Commission.

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 7 of the Act, including, without limitation, the right to impose, enforce and collect charges 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 the Governmental Agency in the terms and covenants of this Loan Agreement, 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 the Act or 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 take all actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Authority's water development revenue bonds.

6.6 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 System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The 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, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the 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 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.

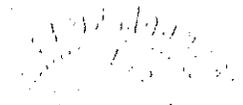
7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by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



(SEAL)

Attest:

Indie J. Olmitt  
Its: Recorder

By: Allen Meadows  
Its: City Manager  
Date: December 21, 2005

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

Attest:

Barbara B Meadows  
Its: Secretary-Treasurer

By: Denise B. Lyubkoff  
Its: Director  
Date: December 21, 2005

000832/00302  
08/11/05

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEERS

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

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

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the

Schedule A attached hereto as Exhibit A and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEN/DRI/TSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof,<sup>2</sup> the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule A attached hereto; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

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

[SEAL]

\_\_\_\_\_  
By: \_\_\_\_\_  
West Virginia License No. \_\_\_\_\_

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

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

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the "Governmental Agency"), a \_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with interest payable semiannually on April 1 and October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, at the rate of \_\_\_% per annum, and with principal payable annually on October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

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

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

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

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

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

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

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

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

6. Under the Local Statute, the Local Bonds and the interest thereon are exempt \_\_\_\_\_.

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

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

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency \_\_\_\_\_  
 Name of Bond Issue(s) \_\_\_\_\_  
 Type of Project \_\_\_\_\_ Water \_\_\_\_\_ Wastewater \_\_\_\_\_  
 Fiscal Year \_\_\_\_\_ Report Month \_\_\_\_\_

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

\_\_\_\_\_  
 Name of Person Completing Form

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1      You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 2      Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 3      Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4      Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

**The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT D

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

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

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

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

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

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

[Name of Governmental Agency]

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

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$9,745,000  
Purchase Price of Local Bonds \$9,745,000

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 5.2% per annum. Principal of the Local Bonds is payable on October 1 in each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

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

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

None.

SCHEDULE Y

\$9,745,000

City of Moundsville

30 Years (LP-IV 2005 Series B-IV Loan)

Closing Date: December 21, 2005

Debt Service Schedule

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I
04/01/2006	-	-	140,761.11	140,761.11
10/01/2006	-	-	253,370.00	253,370.00
04/01/2007	-	-	253,370.00	253,370.00
10/01/2007	-	-	253,370.00	253,370.00
04/01/2008	-	-	253,370.00	253,370.00
10/01/2008	161,657.00	5.200%	253,370.00	415,027.00
04/01/2009	-	-	249,166.92	249,166.92
10/01/2009	170,063.00	5.200%	249,166.92	419,229.92
04/01/2010	-	-	244,745.28	244,745.28
10/01/2010	178,906.00	5.200%	244,745.28	423,651.28
04/01/2011	-	-	240,093.72	240,093.72
10/01/2011	188,209.00	5.200%	240,093.72	428,302.72
04/01/2012	-	-	235,200.29	235,200.29
10/01/2012	197,996.00	5.200%	235,200.29	433,196.29
04/01/2013	-	-	230,052.39	230,052.39
10/01/2013	208,292.00	5.200%	230,052.39	438,344.39
04/01/2014	-	-	224,636.80	224,636.80
10/01/2014	219,123.00	5.200%	224,636.80	443,759.80
04/01/2015	-	-	218,939.60	218,939.60
10/01/2015	230,517.00	5.200%	218,939.60	449,456.60
04/01/2016	-	-	212,946.16	212,946.16
10/01/2016	242,504.00	5.200%	212,946.16	455,450.16
04/01/2017	-	-	206,641.06	206,641.06
10/01/2017	255,115.00	5.200%	206,641.06	461,756.06
04/01/2018	-	-	200,008.07	200,008.07
10/01/2018	268,380.00	5.200%	200,008.07	468,388.07
04/01/2019	-	-	193,030.19	193,030.19
10/01/2019	282,336.00	5.200%	193,030.19	475,366.19
04/01/2020	-	-	185,689.45	185,689.45
10/01/2020	297,018.00	5.200%	185,689.45	482,707.45
04/01/2021	-	-	177,966.98	177,966.98
10/01/2021	312,463.00	5.200%	177,966.98	490,429.98
04/01/2022	-	-	169,842.95	169,842.95
10/01/2022	328,711.00	5.200%	169,842.95	498,553.95
04/01/2023	-	-	161,296.46	161,296.46
10/01/2023	345,804.00	5.200%	161,296.46	507,100.46
04/01/2024	-	-	152,305.56	152,305.56
10/01/2024	363,786.00	5.200%	152,305.56	516,091.56
04/01/2025	-	-	142,847.12	142,847.12
10/01/2025	382,702.00	5.200%	142,847.12	525,549.12
04/01/2026	-	-	132,896.87	132,896.87
10/01/2026	402,603.00	5.200%	132,896.87	535,499.87
04/01/2027	-	-	122,429.19	122,429.19
10/01/2027	423,538.00	5.200%	122,429.19	545,967.19

**\$9,745,000**

City of Moundsville

30 Years (LP-IV 2005 Series B-IV Loan)

Closing Date: December 21, 2005

**Debt Service Schedule**

Date	Principal	Coupon	Interest	Total P+I
10/01/2006	-	-	394,131.11	394,131.11
10/01/2007	-	-	506,740.00	506,740.00
10/01/2008	161,657.00	5.200%	506,740.00	668,397.00
10/01/2009	170,063.00	5.200%	498,333.84	668,396.84
10/01/2010	178,906.00	5.200%	489,490.56	668,396.56
10/01/2011	188,209.00	5.200%	480,187.44	668,396.44
10/01/2012	197,996.00	5.200%	470,400.58	668,396.58
10/01/2013	208,292.00	5.200%	460,104.78	668,396.78
10/01/2014	219,123.00	5.200%	449,273.60	668,396.60
10/01/2015	230,517.00	5.200%	437,879.20	668,396.20
10/01/2016	242,504.00	5.200%	425,892.32	668,396.32
10/01/2017	255,115.00	5.200%	413,282.12	668,397.12
10/01/2018	268,380.00	5.200%	400,016.14	668,396.14
10/01/2019	282,336.00	5.200%	386,060.38	668,396.38
10/01/2020	297,018.00	5.200%	371,378.90	668,396.90
10/01/2021	312,463.00	5.200%	355,933.96	668,396.96
10/01/2022	328,711.00	5.200%	339,685.90	668,396.90
10/01/2023	345,804.00	5.200%	322,592.92	668,396.92
10/01/2024	363,786.00	5.200%	304,611.12	668,397.12
10/01/2025	382,702.00	5.200%	285,694.24	668,396.24
10/01/2026	402,603.00	5.200%	265,793.74	668,396.74
10/01/2027	423,538.00	5.200%	244,858.38	668,396.38
10/01/2028	445,562.00	5.200%	222,834.40	668,396.40
10/01/2029	468,731.00	5.200%	199,665.18	668,396.18
10/01/2030	493,105.00	5.200%	175,291.16	668,396.16
10/01/2031	518,747.00	5.200%	149,649.70	668,396.70
10/01/2032	545,722.00	5.200%	122,674.86	668,396.86
10/01/2033	574,099.00	5.200%	94,297.32	668,396.32
10/01/2034	603,953.00	5.200%	64,444.18	668,397.18
10/01/2035	635,358.00	5.200%	33,038.62	668,396.62
<b>Total</b>	<b>\$9,745,000.00</b>	<b>-</b>	<b>\$9,870,976.65</b>	<b>\$19,615,976.65</b>

**Yield Statistics**

Bond Year Dollars	\$189,826.47
Average Life	19.479 Years
Average Coupon	5.2000000%
Net Interest Cost (NIC)	5.2000000%
True Interest Cost (TIC)	5.2007035%
Bond Yield for Arbitrage Purposes	5.2007035%
All Inclusive Cost (AIC)	5.2007035%

**IRS Form 8038**

Net Interest Cost	5.2000000%
Weighted Average Maturity	19.479 Years

File | WDA 2005 Series B LP-IV.sf | Moundsville WDA Loan FINA | 12/ 8/2005 | 11:09 AM

**Ferris, Baker Watts, Inc.**  
West Virginia Public Finance Office (B. Nassiri)

SCHEDULE Z

None



**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 7<sup>th</sup> day of November, 2005.

Case No. 03-1974-W-CN-PW

City of Moundsville,  
a municipal corporation.

Application for a certificate of convenience and necessity  
to construct a water treatment plant.

Case No. 05-0641-W-MA

City of Moundsville,  
a municipal corporation.

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

**COMMISSION CORRECTIVE ORDER**

On October 31, 2005 the Commission issued an order in the above-referenced cases which, among other things, ordered the following:

IT IS FURTHER ORDERED that, in addition to the funding previously approved in this case, the Utility's requested funding in the form of either: (1) a \$4,900,000 USDA RUS loan, payable over 38 years at 4.25% per annum, coupled with a \$9,107,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum, or (2) a \$14,007,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum; is hereby approved contingent upon the Utility's ability to obtain such funding.

The Commission's Order inadvertently referenced the incorrect amount for the WDA loan. Instead of "\$9,107,000," the loan amount should have read "\$9,745,000" as described in the "Exceptions of the City of Moundsville to the September 29, 2005 Recommended Decision," "Brief in Support of the Exceptions of City of Moundsville," and Attachment B thereto.

The Commission shall correct its order herein.

ORDER

IT IS THEREFORE ORDERED that the second ordering paragraph of the Commission's October 31, 2005 order in Case Nos. 03-1974-W-CN-PW and 05-0641-W-MA shall be revised to read as follows:

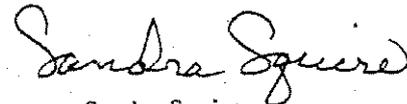
IT IS FURTHER ORDERED that, in addition to the funding previously approved in this case, the Utility's requested funding in the form of either: (1) a \$4,900,000 USDA RUS loan, payable over 38 years at 4.25% per annum, coupled with a \$9,745,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum, or (2) a \$14,007,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum; is hereby approved contingent upon the Utility's ability to obtain such funding.

IT IS FURTHER ORDERED that with the above correction the Commission's October 31, 2005 order remains the final order of the Commission.

IT IS FURTHER ORDERED that upon entry of this order these cases shall be removed from the Commission's docket of open cases.

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

A True Copy, Teste:



Sandra Squire  
Executive Secretary

JJW/klm  
031974ce.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 31st day of October, 2005.

Case No. 03-1974-W-CN-PW  
City of Moundsville,  
a municipal corporation.

Application for a certificate of convenience and necessity  
to construct a water treatment plant.

Case No. 05-0641-W-MA  
City of Moundsville,  
a municipal corporation.

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

**COMMISSION ORDER**

On August 17, 2004 the Commission granted the City of Moundsville (Utility) a certificate of convenience and necessity to construct a water treatment plant. (Case No. 03-1974-W-CN-PW.) The Commission found that the existing water was of poor quality with excessive manganese and hardness. The Commission approved an innovative plant using ozonization, nanofiltration, and traveling bridge filters.

The bids for the treatment plant were several million dollars more than anticipated. The bids substantially exceeded the amount originally financed and approved by the Commission.

On April 19, 2005 the Utility adopted a new rate ordinance increasing its water rates in order to support the greater expense. (Case No. 05-0641-W-MA.)

On May 6, 2005 the Commission received a protest to the rate increase from the Marshall County Public Service District No. 4 (PSD 4). PSD 4 alleged that the water increase was discriminatory:

On May 10, 2005 the Commission asserted its jurisdiction over the municipal ordinance pursuant to *West Virginia Code* § 24-2-4b. The Commission suspended the Utility's rate increase and referred the matter to the Division of Administrative Law Judges (ALJ). The Commission required Staff to issue its report on or before July 19, 2005. The Commission required a Recommended Decision on or before September 2, 2005.

On May 19, 2005 PSD 4 moved to reopen the certificate proceeding and moved to intervene in that proceeding.

On May 25, 2005 Marshall County Public Service District No. 3 (PSD 3) filed an objection to the rate increase and also alleged that it was discriminatory.

On May 27, 2005 Staff moved to consolidate the municipal appeal with the certificate proceeding. Staff opined that, with the additional costs, it may make sense for the Utility to purchase its water from Wheeling. Staff further moved to add Wheeling as a party to the proceeding.

On June 1, 2005 the Commission referred the reopened certificate proceeding to the ALJ Division with a decision due date of December 16, 2005.

On June 6, 2005 the Utility filed motions to toll the statutory period in 05-0641-W-MA by thirty-one (31) days, to consolidate the two proceedings, and to shorten the decision due date in 03-1974-W-CN-PW.

On June 13, 2005 Wheeling objected to being made a party. Wheeling indicated that it would meet with Staff and the other parties on an informal basis, but that full party status would unnecessarily cost Wheeling a significant amount of money.

By Procedural Order issued June 13, 2005, Staff's motion to consolidate the municipal appeal and the certificate case was denied, due to the abbreviated nature of municipal appeals. Staff's motion to add Wheeling as a party was denied, due to concern that full party status would unnecessarily cost Wheeling a significant amount of money and upon the assumption that Wheeling would cooperate with Staff. The matter was also set for hearing on August 2, 2005.

On June 14, 2005 the Utility filed an "Application for Approval of Project Changes." Therein, the Utility noted that the project was originally expected to cost \$13,569,000.00. The lowest responsible construction bid totaled \$16,807,666.00. The Utility further noted that in order to minimize the impact of the high bids, the Moundsville City Council enacted a two-step rate increase. In order to eliminate capitalized interest on the project, the first

step-increase would cover current operating costs plus the debt service associated with the project. The second step-increase would go into effect upon completion of construction (expected in December of 2007). Revenues from the second step are designed to be sufficient to pay debt service associated with the project plus increased operations and maintenance expenses arising from operation of the new water treatment plant.

By Commission Order issued June 30, 2005 the Commission granted the Utility's motions and consolidated the two proceedings, tolled the statutory period in 05-0641-W-MA for thirty-one (31) days (until November 2, 2005), granted an extension of the decision due date in 05-0641-W-MA by the same amount, and shortened the decision due date in 03-1974-W-CN-PW to October 3, 2005.

By Procedural Order issued July 22, 2005 the hearing set for August 2, 2005, was cancelled. A new hearing was scheduled for August 30, 2005. Expedited transcripts were required and initial briefs were required to be filed on or before September 13, 2005, with reply briefs to be filed on or before September 20, 2005.

The hearing was held as scheduled. James V. Kelsh, Esquire, and John L. Allen, Esquire, appeared on behalf of the Utility. Mark E. Kauffelt, Esquire, appeared on behalf of PSD 4. David White, Esquire, appeared on behalf of PSD 3 and PSD 4. Cassius H. Toon, Esquire, appeared on behalf of Commission Staff.

On August 31, 2005 the Commission received a protest from the Utility consisting of a petition containing signatures representing protests to the alternative plan.

Staff filed a further Staff Memorandum on September 7, 2005. PSD 3, PSD 4, and the Utility filed briefs on September 13, 2005. Reply briefs were filed on September 20, 2005.

On September 29, 2005 the ALJ issued a Recommended Decision denying the certificate and denying the associated rate increase passed by the City of Moundsville. The ALJ set forth the following Findings of Fact, Conclusions of Law, and Ordering paragraphs:

#### FINDINGS OF FACT

1. The Infrastructure Council has not yet approved the funding for this project and is contemplating referring the project to its consolidation committee. (Tr. 144, 145; Utility Ex. 10).

2. Wheeling stands ready and willing to provide the Utility with all of its water needs and is even willing to consider various alternatives on how to get the transmission line built. (Tr. 162, 171).

3. Wheeling has more than enough excess capacity to serve the Utility and can do so without additional staff or operation time. (Tr. 162, 163).

4. Wheeling's water has never been out of compliance with water quality standards. (Tr. 167).

5. Three municipalities operate water utilities between Wheeling and Moundsville, all of which would benefit from a transmission line between the two cities. (Tr. 119, 175, 177).

6. There are industrial sites between Wheeling and Moundsville that could benefit from having a large supply of potable water easily accessible. (Tr. 200).

7. If Wheeling provided the Utility with water, Wheeling's sales would increase by 20%, without substantially increasing its O&M expenses, which would benefit the Wheeling system both in terms of a downward pressure on rates and making it easier to improve its system with lower rate increases. (Tr. 162, 179, 180, 342, 343).

8. Building a transmission line to Wheeling, even including new storage, would be less costly than building the proposed plant. (Tr. Tr. 191, 258, 265, 266, 269; PSD 4 Ex. Nos. 6, 7).

9. The transmission line could be built in a reasonable time frame using conventional methods and would be reliable and durable. (Tr. 91, 92, 93, 191, 192, 193, 198, 199, 207, 340, 347).

10. The transmission line option would provide the Utility with 3,000,000 gallons of storage, while the treatment plant option will only provide 500,000 gallons of storage. (Tr. pp. 84, 118).

## CONCLUSIONS OF LAW

1. Public convenience does not require the treatment plant as proposed by the Utility given that the public interest would be more clearly advanced if the Utility purchased its water from Wheeling.

2. The rates adopted by the Utility to support the project should be rejected given that the project should not be granted a certificate.

## ORDER

IT IS, THEREFORE, ORDERED that the City of Moundsville's application filed on November 21, 2003, and reopened on May 19, 2005, for a certificate of convenience and necessity to build a treatment plant be, and hereby is, denied.

IT IS FURTHER ORDERED that the City of Moundsville's rate ordinance adopted on April 19, 2005, to support the proposed project be, and hereby is, rejected.

The Utility filed exceptions on October 7, 2005. Therein, the Utility excepted to Findings of Fact Nos. 1, 5, 6, 7, 8, 9, and 10; Conclusions of Law Nos. 1 and 2; and argued that the Recommended Decision ignored and failed to address: (a) the briefs of the parties; (b) the great value of the Moundsville plant in producing high quality water at rates below the statewide average; (c) the advantages of Moundsville's continued use of a ground water source of supply; (d) the comparative advantage of the Moundsville plant in addressing increasingly stringent water treatment and quality standards; (e) the greater reliability of the Moundsville treatment plant; (f) the long-term water treatment cost stability of the Moundsville water treatment plant; (g) Moundsville's sunk costs on the water treatment plant project; (h) the preference of the elected officials of the City of Moundsville and the Marshall County Commission for the Moundsville plant; (i) the uncertain costs of upgrades to the Wheeling treatment plant and the consequential uncertainty as to Wheeling's long-term rates; (j) the risk of errant estimates of the cost of the Wheeling transmission line, as contrasted with price certainty for the Moundsville water treatment plant; (k) the risk of price escalation with the Wheeling transmission line and treatment plant improvements, as contrasted with price certainty associated with the Moundsville water treatment plant; and (l) the difficulty of constructing a transmission line involving five cities, two industrial concerns, and one or more railroads.

The Marshall County Commission filed a letter on October 14, 2005 in opposition to the transmission of water from Wheeling to Moundsville.

On October 17, 2005 Wheeling filed a response to the Utility's exceptions, noting, among other things, the following: (1) that a water line from Wheeling to Moundsville would allow rates in Wheeling to decrease; (2) the engineering and legal considerations would not be difficult to overcome; (3) the Utility overstated the problems with Wheeling's water quality; (4) Wheeling could provide a reliable source of supply; and (5) Wheeling is willing to cooperate in developing a regional solution.

Also on October 17, 2005 the PSD 3 and PSD 4 filed a response to the Utility's exceptions. Among other things, the Districts noted the following: (1) the Districts support the construction of a water line from Wheeling to the Utility; (2) Wheeling has adequate capacity to provide service to the Utility; (3) Wheeling's water supply is of acceptable quality and there is sufficient supply; (4) a tank is not necessary when building the line from Wheeling to the Utility and it is feasible to build such a line; (5) neither the Utility nor Staff adequately explained why a tank was necessary for the water line but not in the instance where the Utility built its own plant; (6) the possibility of a Wheeling rate increase is pure speculation; (7) Staff's determination in favoring the Moundsville plant is flawed due to assumptions made by Staff in its calculations; (8) building a line would save hundreds of thousands of dollars per year for the customers of the Utility; and (9) the two-tiered rates violate Commission policy. Rates associated with a project should not go into effect until a project is completed.

Staff filed Exceptions on October 17, 2005. In its Exceptions, Staff argued, among other things, the following: (1) the Wheeling water line would be difficult to construct for a number of reasons; (2) the funding of the plant is not at issue in this case as additional funding is available; (3) Wheeling will need improvements to its system in order to stay in compliance with new water quality regulations; (4) The connection of other utilities/industries to a Wheeling water line is speculation; (5) a decrease in Wheeling's rates is speculative; (6) the ALJ does not fully understand the present worth cost analysis performed by Staff in its two-tiered rate increase; (7) the ALJ misunderstood the issue of the storage necessary under the two scenarios. Staff also raised some issues regarding calculation of the tariff rates.

On October 18, 2005 the Utility filed a motion to strike Wheeling's response arguing (1) Wheeling is not a party to this matter and (2) Wheeling relies on information lying outside of the record of this case.

On October 19, 2005 the PSD 3 and PSD 4 filed a response to the Utility's motion to strike. The Districts argued that Wheeling should be permitted to defend itself against the statements made by the Utility and that nothing in the record supports disparaging the quality of Wheeling's treated water.

On October 19, 2005 petitions were filed in support of the plant and in opposition to the Wheeling water line scenario.

On October 19, 2005 the PSD 4 filed a response to Staff's Exceptions noting (1) the Wheeling water line can be feasibly built and (2) approving a plant for the Utility will obstruct regionalization of water service in the Northern Panhandle.

### DISCUSSION

The Commission has reviewed the Recommended Decision, exceptions, responses to exceptions, and additional filings from all parties, and from Wheeling, in this matter. The parties have raised and argued the question of whether the Moundsville plant should be abandoned in favor of extension of a water line from the City of Wheeling.

This particular project was approved in the Commission's August 17, 2004 Order. That Order directed the Utility to return to the Commission for approval should the engineering plans, the scope of the project, or the financing change.

The questions before the Commission are whether the project should still be approved given its increase in cost (Case No. 03-1974-W-CN-PW) and whether the rates proposed in Case No. 05-0641-W-MA are discriminatory.

The benefits to be derived from the project by the Utility's current and potential customers have not changed appreciably since the project was approved by the Commission's August 17, 2004 Order. The pertinent change is that the project is expected to cost over \$3.2 million more than originally anticipated.

Several parties raised financing, as distinguished from costs, as an issue. Both the Utility and Staff argued that funding will be made available by the West Virginia Infrastructure and Jobs Development Council should the Commission ultimately approve the Utility's request for proposed changes to the project. Approval of this project will remain contingent upon the Utility obtaining the needed increase in financing. Treated as a contingency, financing becomes a non-issue.

The Wheeling water line is not, at this time, a viable alternative to the Utility's project. While the purported benefits of the Wheeling line (lower cost, regional appeal, a source of supply for resale customers, increased sales by Wheeling, lower rates for Wheeling, ease of construction) make for an inviting comparison, the reality is that such benefits are based on rough estimates and good-faith conjecture in regards to a water transmission line that is barely past the conceptual stages of development. Additionally, the chief proponent of the water line chose to not appear as a party in this matter. The Commission will not deny the Utility's certificate based on such conjecture.

PSD 3 and PSD 4 objected to the two-tier rates proposed by the Moundsville City Council. Specifically, the Districts claimed discrimination because the first stage of the rates are charged to the resale customers prior to completion of the plant. As such, the districts argue that the money collected in advance of project completion could be used for improvements to the water system within the City of Moundsville without providing any benefits to resale customers.

The "Staff Report" filed August 22, 2005 noted the following:

Based upon going level operations it is apparent that current rates are sufficient to cover the current costs of the Board. However, an increase is necessary to handle the interest costs associated with the new long-term indebtedness so that the respective interest amounts would not have to be capitalized. Thus, due to a significant increase in interest costs with the new treatment plant a large increase in rates is required. Based upon information provided by the Analyst in the Certificate case, if the capitalized interest is rolled into the long-term debt and amortized over 30 and 38 year periods respectively the payback will cost approximately \$2,315,688 more. Thus, the user rates including the resale rate would have to be increased. Therefore, Staff has provided for a two step increase in rates. Staff Recommended #1 rates will address going level increases as well as increases associated with the new long-term debt interest costs, while Staff Recommended #2 rates will address all increases associated with the new treatment facility including O&M, Taxes Other than Income Taxes, Debt Service, reserves, etc. [Staff Report at pp. 3-4.]

Staff updated its position with its "Further Final Joint Staff Memorandum" filed September 7, 2005. Therein, Staff stated:

After the Staff Report was submitted, information was filed by [the Water Development Authority] WDA which changed the annual debt service

as projected by Staff in Case No. 03-1974-W-CN (Reopened). Based upon the information provided by WDA the City of Moundsville (City) will pay interest only for the first two years in the respective amounts of \$472,632.50 and \$584,700 for a total of \$1,057,332.50. Thus, Staff adjusted the interest expense in the Staff Recommended #1 rates (Tier 1) to an average expense of \$528,666 ( $\$1,057,332.50 / 2$  years) annually over this two year period. Furthermore, WDA also advised Staff that it would require 115% coverage on the Staff Recommended #1 rates. Therefore, Staff has attached revised pages to its Staff Report to incorporate the changes for a reduction in annual interest expense and for adjustments required to have 115% coverage as required by WDA.

It should be noted that Staff had previously amortized \$45,709 annually to offset the respective surplus amounts recommended in this case. However, due to the coverage requirements Staff cannot reduce the surplus amount by this amount, but has instead reclassified this amount as a Cash Reserve Transfer (Statement A, Schedule 6 & Statement H) to be considered as other income. Therefore, the City should be ordered to amortize \$45,709 annually from their unencumbered funds for at least the first two years in order to meet the 115% coverage required.

These changes result in a decrease in rates for all classes of customers in the Staff Recommended #1 rates (Tier #1) from that originally recommended by Staff. These changes are reflected in the rate comparison, included as Attachment 1 Revised, and in the Staff Recommended #1 rates and charges contained on Statement D, Schedule 4.

#### Post Construction Rates (Staff Recommended #2)

Based upon the information provided by WDA, the City will pay \$726,905 annually in principal and interest over the remaining 28 years of the loan. Therefore, the annual payment has increased from the Staff projected \$701,114 annually to \$726,905 annually for a difference of \$25,791. This increase in debt service would also require additional increases in funds required for the respective Primary and Renewal and Replacement reserves. However, as noted in Staff's testimony at the hearing, the City has two current loans (Total Debt Service of \$29,766 annually) for a backhoe and dump truck which mature in late 2007. Therefore, Staff has removed the debt service associated with these two loans since they will be matured at the time of the Staff Recommended #2 rates (Tier #2) becoming effective.

It should be noted that Staff had previously amortized \$45,709 annually to offset the surplus amounts recommended in this case. Staff has reclassified this amount as a Cash Reserve Transfer to be considered as other income.

Thus, the adjustments made to increase annual WDA debt service and adjustments made to remove matured loans for the backhoe and dump truck result in no change in Staff Recommended #2 rates, since the totals of the two are approximately the same.

Therefore, Staff has revised its recommendation to incorporate changes in WDA debt service and coverage requirements and to adjust for the maturing of two loans in 2007. The end result of the revisions will produce the rates and charges contained on Staff's Revised Statement D, Schedule 4. Staff Recommended #1 revised rates and charges provide for a minimum bill based on 2,000 gallons of \$8.42 and a bill based on 4,500 gallons of \$16.45. The resale rate will be \$2.28 per M gallon. As previously noted, there will be no change in the Staff Recommended #2 (Tier #2) rates previously recommended by Staff. The revised cash flow (Statement H) provides for a surplus of \$83,303 and coverage of 115.09% at Staff Recommended #1 and a surplus of \$87,656 and coverage of 124.63% at Staff Recommended #2. Staff is filing revised Pages 1-8, 13, 14, 20-23, 42, 55-59, 61-65, and Attachment 1 and 2 Revised.

In its "Reply Brief of the City of Moundsville," filed September 20, 2005 the Utility requested the Commission adopt the Utility's Tier I rates and the Staff's Tier II rates, noting that Staff's Tier 1 rates were insufficient.

Staff's October 17, 2005 "Exceptions to Recommended Decision" addressed the sufficiency of the Tier I rates. Staff stated:

The City, in its September 13, 2005, Initial Brief and its September 26, 2005, Rule 42 Exhibit, argue Staff's Step 1 rates and charges are understated and propose higher Step 1 rates and charges. The reason being Staff's Step 1 rates do not cover the proposed annual capital interest expense nor do they produce the required debt coverage without the transfer of \$45,709 in unencumbered funds to the general revenue fund. Staff has not been provided a revised amortization schedule indicating an increase in the Water Development Authority (WDA) interest expense incurred during construction then the amount funded by Staff in its Step 1 rates. Further, Staff inquired about this issue of meeting the required debt coverage with the WDA, and was to receive

a follow-up response to this inquiry. However, no response or indication from the WDA was provided addressing this issue. It was not until the City's Initial Brief filing that it indicated that it did not meet the WDA requirement.

Staff would argue that the unencumbered funds were generated through current rates and utilizing these funds as a source of revenue to secure and guarantee sufficient funds to cover the annual interest expense during construction and meet the required debt coverage, accomplishes these requirements. The City argues the unencumbered funds are not a component of the annual net revenues and as such are not received on an annual basis nor can they be expected to be received on a recurring basis. Further, the City notes that possible construction delays could occur which would impact the City's ability to remain current with the lenders since Staff's Step 1 rates would be insufficient. While Staff is proposing the City utilize these unencumbered funds as an other revenue source to meet the debt coverage requirement, it is likely these funds will never actually be expended. This is due to the fact that Staff's Step 1 rates, as proposed, generate a cash flow surplus of approximately \$83,303 which exceeds the \$45,709 annual amount of unencumbered funds to be utilized. Again, Staff is reaffirming its recommendation for approval of its Step 1 and 2 rate increases. Staff would note, if documentation is provided that the project funding agencies will deny closing on the financing due [to] rate adequacy issues, Staff would recommend, in the alternative, that the City's Step 1 rates be approved. [Staff Exceptions at pp. 14-16.]

No further documentation was received. The Commission agrees with the Staff's treatment of this issue and shall adopt the Staff-recommended rates herein. Additionally, the Commission shall order the Utility to amortize \$45,709 annually from their unencumbered funds until such time as it has met the WDA required 115% debt coverage.

There is no discrimination in the implementation of the tiered rates. All customers will help to pay for the project in advance of the project's completion. Additionally, all customers will benefit from those early payments by paying lower rates than would be necessary were the Tier I rates not used.

The Commission understands that this decision is a departure from the Commission's usual advocacy of the "used and useful" theory of only charging rates associated with a project after the project is in service. However, the Commission notes that departure from the theory in this instance will result in a savings to all customers of the Utility.

The Commission shall not adopt the ALJ's Recommended Decision; shall approve the Utility's proposed changes to the project; shall approve the additional funding for the project contingent on the Utility obtaining such funding; and shall approve Staff's tiered rates for use by the Utility.

### FINDINGS OF FACT

1. On August 17, 2004 the Commission granted the Utility a certificate of convenience and necessity to construct a water treatment plant. (See, Case No. 03-1974-W-CN-PW.)
2. The bids for the treatment plant were several million dollars more than anticipated. The bids substantially exceeded the amount originally financed and approved by the Commission.
3. On April 19, 2005 the Utility adopted a new rate ordinance increasing its water rates in order to support the greater expense. (See, Case No. 05-0641-W-MA.)
4. On May 6, 2005 the Commission received a protest to the rate increase from the PSD 4. PSD 4 alleged that the water increase was discriminatory.
5. On May 10, 2005 the Commission asserted its jurisdiction over the municipal ordinance pursuant to *West Virginia Code* § 24-2-4b. The Commission suspended the Utility's rate increase.
6. On May 19, 2005 PSD 4 moved to reopen the certificate proceeding and moved to intervene in that proceeding.
7. On May 25, 2005 PSD 3 filed an objection to the rate increase and also alleged that it was discriminatory.
8. On June 14, 2005 the Utility filed an "Application for Approval of Project Changes." Therein, the Utility noted that the project was originally expected to cost \$13,569,000.00. The lowest responsible construction bid totaled \$16,807,666.00. The Utility further noted that in order to minimize the impact of the high bids, the Moundsville City Council enacted a two-step rate increase.
9. The hearing was held on August 30, 2005 in the two cases, as scheduled.

10. On September 29, 2005 the ALJ issued a Recommended Decision denying the certificate and denying the associated rate increase passed by the City of Moundsville.

11. The Utility filed exceptions on October 7, 2005. Therein, the Utility excepted to Findings of Fact Nos. 1, 5, 6, 7, 8, 9, and 10; Conclusions of Law Nos. 1 and 2; and argued that the Recommended Decision ignored and failed to address certain other issues. Staff also filed exceptions. The parties filed various replies to the exceptions. (See the procedural section of this order for more detail on the filings.)

12. Wheeling, PSD 3 and PSD 4 recommended that a water line extension from Wheeling to the Utility would be more cost-effective and comprised a better regional solution to the Utility's water needs than did the proposed new plant.

13. The benefits to be derived from the project by the Utility's current and potential customers have not changed appreciably since the project was approved by the Commission's August 17, 2004 Order.

14. Both the Utility and Staff argued that funding will be made available by the West Virginia Infrastructure and Jobs Development Council should the Commission ultimately approve the Utility's request for proposed changes to the project.

15. The chief proponent of the water line, Wheeling, chose to not appear as a party in this matter.

16. PSD 3 and PSD 4 objected to the two-tier rates proposed by the Moundsville City Council. Specifically, the districts claimed discrimination because the first stage of the rates are charged to the resale customers prior to completion of the plant. (See the petitions filed by the districts in opposition to the Utility's municipal ordinance.)

17. Based upon going level operations it is apparent that current rates are sufficient to cover the current costs of the Board. ("Staff Report," August 22, 2005.)

18. An increase is necessary to handle the interest costs associated with the new long-term indebtedness so that the respective interest amounts would not have to be capitalized. ("Staff Report," August 22, 2005.)

19. If the capitalized interest is rolled into the long-term debt and amortized over 30 and 38 year periods respectively the payback will cost approximately \$2,315,688 more. Thus, the user rates including the resale rate would have to be increased. ("Staff Report," August 22, 2005.)

20. Staff Recommended #1 revised rates and charges provide for a minimum bill based on 2,000 gallons of \$8.42 and a bill based on 4,500 gallons of \$16.45. The resale rate will be \$2.28 per 1000 gallon. The revised cash flow provides for a surplus of \$83,303 and coverage of 115.09% at Staff Recommended #1 and a surplus of \$87,656 and coverage of 124.63% at Staff Recommended #2. ("Staff Report," August 22, 2005.)

### CONCLUSIONS OF LAW

1. Approval of this project will remain contingent upon the Utility obtaining the needed increase in financing from the West Virginia Infrastructure and Jobs Development Council.

2. The Wheeling water line is not, at this time, a viable alternative to the Utility's project. While the purported benefits of the Wheeling line (lower cost, regional appeal, a source of supply for resale customers, increased sales by Wheeling, lower rates for Wheeling, ease of construction) make for an inviting comparison, the reality is that such benefits are based on rough estimates and good-faith conjecture in regards to a water transmission line that is barely past the conceptual stages of development. The Commission will not deny the Utility's certificate based on such conjecture.

3. The Commission shall adopt the Staff-proposed rates for use by the Utility. Additionally, the Commission shall order the Utility to amortize \$45,709 annually from their unencumbered funds until such time as it has met the required 115% WDA debt coverage.

4. There is no discrimination in the implementation of the tiered rates. All customers will help to pay for the project in advance of the project's completion. Additionally, all customers will benefit from those early payments by paying lower rates than would be necessary were the Tier I rates not used.

5. The Commission understands that this decision is a departure from the Commission's usual advocacy of the "used and useful" theory of only charging rates associated with a project after the project is in service. However, the Commission notes that departure from the theory in this instance will result in a savings to all customers of the Utility.

6. The Commission shall not adopt the ALJ's Recommended Decision; shall approve the Utility's proposed changes to the project; shall approve the additional funding for the project contingent on the Utility obtaining such funding; and shall approve Staff's tiered rates for use by the Utility.

## ORDER

IT IS THEREFORE ORDERED that the proposed changes to the project requested by the Utility are hereby approved contingent upon the Utility obtaining the additional funding necessary.

IT IS FURTHER ORDERED that, in addition to the funding previously approved in this case, the Utility's requested funding in the form of either: (1) a \$4,900,000 USDA RUS loan, payable over 38 years at 4.25% per annum, coupled with a \$9,107,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum, or (2) a \$14,007,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum; is hereby approved contingent upon the Utility's ability to obtain such funding.

IT IS FURTHER ORDERED that the rates attached hereto are approved for use by the Utility. Tariff I shall be effective for all service rendered on and after the end of the suspension period until such time as Tariff II becomes effective. Tariff II shall be effective for all service rendered by the Utility upon completion of the construction associated with its project.

IT IS FURTHER ORDERED that the Utility submit its engineering report indicating completion of the project within ten days of its receipt.

IT IS FURTHER ORDERED that the Utility submit a copy of its Tariff I to the Commission's Tariff Office within thirty days of the end of the suspension period.

IT IS FURTHER ORDERED that the Utility submit a copy of its Tariff II to the Commission's Tariff Office within thirty days of completion of construction of the project approved by this Order.

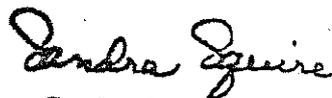
IT IS FURTHER ORDERED that the Utility shall amortize \$45,709 annually from their unencumbered funds until such time as it has met the required 115% WDA debt coverage.

IT IS FURTHER ORDERED that if there are changes in the scope, financing or cost of the project, the Utility seek Commission approval of such changes prior to commencing or continuing construction.

IT IS FURTHER ORDERED that upon entry of this order these cases shall be removed from the Commission's docket of open cases.

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

A True Copy, Teste:



Sandra Squire  
Executive Secretary

JJW/klm  
031974cd.wpd

**CITY OF MOUNDSVILLE - Water Operations  
CASE NUMBER 05-0641-W-MA**

**APPROVED RATES - TARIFF #1**

(N) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY

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

(I) RATES (Customers with metered water supply)

First	2,000	gallons used per month	\$4.21 per 1,000 gallons
Next	28,000	gallons used per month	\$3.21 per 1,000 gallons
All Over	30,000	gallons used per month	\$2.28 per 1,000 gallons

(I) MINIMUM CHARGES

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

5/8 x 3/4	inch meter	\$8.42	per month
3/4	inch meter	\$12.63	per month
1	inch meter	\$21.05	per month
1-1/2	inch meter	\$42.10	per month
2	inch meter	\$67.36	per month
3	inch meter	\$126.30	per month
4	inch meter	\$210.50	per month
6	inch meter	\$421.00	per month
8	inch meter	\$673.60	per month

(C) (I) SALE FOR RESALE

All water for resale to Marshall County PSD #3 and Marshall County PSD #4 will be billed in accordance to the approved rate of \$2.28 per 1,000 gallons used per month.

(C) DELAYED PAYMENT PENALTY

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

(C) RECONNECTION \$25.00

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

(C) TAP FEE

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

A tap fee of \$330.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) (I) RETURNED CHECK CHARGE

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

(C) (I) LEAK ADJUSTMENT

\$0.20 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(C) PUBLIC FIRE PROTECTION

The City of Moundsville shall pay a public fire service charge of \$124.80 per hydrant per annum, payable in twelve equal monthly payments. This charge covers all water system facilities existing at Moundsville, WV, which are used in whole or in part for public fire service.

(C) PRIVATE FIRE PROTECTION

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

1-1/2 service line with hydrants, sprinklers and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$31.20 connection

2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$39.00 connection

2-1/2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$54.00 connection

(C) Indicates change in text

(I) Indicates Increase

(N) Indicates New

**CITY OF MOUNDSVILLE - Water Operations  
CASE NUMBER 05-0641-W-MA**

**APPROVED RATES - TARIFF #2**

(N) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY

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

(I) RATES (Customers with metered water supply)

First	2,000	gallons used per month	\$6.31 per 1,000 gallons
Next	28,000	gallons used per month	\$4.45 per 1,000 gallons
All Over	30,000	gallons used per month	\$3.59 per 1,000 gallons

(I) MINIMUM CHARGES

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

5/8 x 3/4	inch meter	\$12.62	per month
3/4	inch meter	\$18.93	per month
1	inch meter	\$31.55	per month
1-1/2	inch meter	\$63.10	per month
2	inch meter	\$100.96	per month
3	inch meter	\$189.30	per month
4	inch meter	\$315.50	per month
6	inch meter	\$631.00	per month
8	inch meter	\$1,009.60	per month

(C) (I) SALE FOR RESALE

All water for resale to Marshall County PSD #3 and Marshall County PSD #4 will be billed in accordance to the approved rate of \$3.59 per 1,000 gallons used per month.

(C) DELAYED PAYMENT PENALTY

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

(C) RECONNECTION \$25.00

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

(C) TAP FEE

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

A tap fee of \$330.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) (I) RETURNED CHECK CHARGE

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

(C) (I) LEAK ADJUSTMENT

\$0.35 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(C) PUBLIC FIRE PROTECTION

The City of Moundsville shall pay a public fire service charge of \$124.80 per hydrant per annum, payable in twelve equal monthly payments. This charge covers all water system facilities existing at Moundsville, WV, which are used in whole or in part for public fire service.

(C) PRIVATE FIRE PROTECTION

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

1-1/2 service line with hydrants, sprinklers and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$31.20 connection

2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$39.00 connection

2-1/2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$54.00 connection

(C) Indicates change in text

(I) Indicates Increase

(N) Indicates New



# West Virginia Infrastructure & Jobs Development Council

**Public Members:**

Mark Prince  
Hurricane  
Dwight Calhoun  
Petersburg  
Tim Stranko  
Morgantown  
Dave McComas  
Prichard

300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Katy Mallory, PE  
Executive Director

Katy.Mallory@verizon.net

December 7, 2005

James Woods, Superintendent  
Moundsville Water Department  
819 Lafayette Avenue  
Moundsville, West Virginia 26041

Re: City of Moundsville  
Water Project 97W-330

Dear Mr. Woods:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Moundsville's (the "City") revised preliminary application regarding its proposed project to construct a water treatment facility to improve the quality of the City's existing ground water supply to comply with state and federal regulations (the "Project").

Based on the findings of the Water Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act.

Upon consideration of revised preliminary application, the Infrastructure Council recommends that the City utilize a \$4,900,000 Rural Utilities Service loan, a \$1,400,000 Abandoned Mine Lands grant, a \$2,168,300 Environmental Protection Agency State Tribal Assistance Grant and pursue a \$9,745,000 Water Development Authority loan to fund this \$18,213,300 project. Please contact the Water Development Authority office at 558-3612 for specific information on the steps the City needs to follow to apply for these funds. Please note that this letter does not constitute funding approval from this agency.

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,



Mark Prince

cc: Pat Taylor, BPH  
Bernie Yonkosky, WDA  
Steve Collins, RUS  
Danny Bess, AML  
Jim Kelsh, Esquire  
Region X Planning & Development Council  
Mark Glenn, P.E., Gwin, Dobson & Foreman



CITY OF MOUNDSVILLE

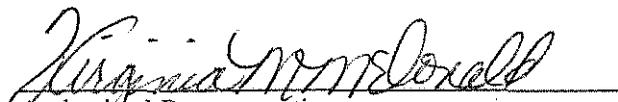
Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture)

RECEIPT FOR SERIES 2005 A BONDS

The undersigned, authorized representative of the United States Department of Agriculture, Rural Utilities Service, for and on behalf of the United States of America (the "Purchaser"), hereby certifies as follows:

1. On the 21<sup>st</sup> day of December, 2005, the undersigned received for the Purchaser the City of Moundsville Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), No. AR-1 (the "Series 2005 A Bonds"), issued as a single, fully registered Bond, in the principal amount of \$4,900,000, dated the date hereof, bearing interest at the rate of 4.25% per annum, payable in monthly installments as stated in the Bond.
2. At the time of such receipt, the Series 2005 A Bonds had been executed and sealed by the designated officials of the City of Moundsville (the "Issuer").
3. At the time of such receipt, there was paid to the Issuer the sum of \$1,098,000.00, being a portion of the principal amount of the Series 2005 A Bonds. The balance of the principal amount of the Series 2005 A Bonds will be advanced by the Purchaser to the Issuer as acquisition and construction of the Project progresses.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

  
Authorized Representative

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 B (West Virginia Water Development Authority)

CROSS-RECEIPT FOR SERIES 2005 B BONDS AND BOND PROCEEDS

On this 21<sup>st</sup> day of December, 2005, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Vice Mayor of the City of Moundsville (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

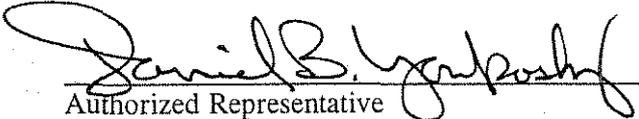
1. On the date hereof, the Authority received the City of Moundsville Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), issued in the principal amount of \$9,745,000, as a single, fully registered Bond, numbered BR-1 and dated December 21, 2005 (the "Series 2005 B Bonds").

2. At the time of such receipt of the Series 2005 B Bonds upon original issuance, the Series 2005 B Bonds had been executed by the Vice Mayor, City Manager, and the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Series 2005 B Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2005 B Bonds, of the sum of \$9,745,000, being the entire principal amount of the Series 2005 B Bonds (100% of par value), there being no interest accrued thereon.

Dated as of the date first written above.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

  
Authorized Representative

CITY OF MOUNDSVILLE

  
Vice Mayor

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 B (West Virginia Water Development Authority)

DIRECTION TO AUTHENTICATE AND DELIVER SERIES 2005 B BONDS

The Huntington National Bank, as  
Bond Registrar for the Series 2005 B Bonds  
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith on this 21<sup>st</sup> day of December, 2005:

(1) Bond No. BR-1, constituting the entire original issue of the City of Moundsville Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), in the principal amount of \$9,745,000, dated December 21, 2005 (the "Series 2005 B Bonds"), executed by the Vice Mayor, City Manager and City Clerk of the City of Moundsville (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on November 1, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation");

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

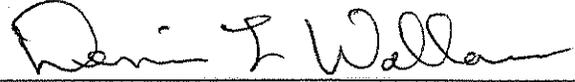
(3) Executed counterparts of the loan agreement dated December 21, 2005 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"); and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Series 2005 B Bonds.

You are hereby requested and authorized to deliver the Series 2005 B Bonds to the Authority upon payment to the Issuer of the sum of \$9,745,000, representing the agreed purchase price of the Series 2005 B Bonds, there being no accrued interest thereon. Prior to such delivery of the Series 2005 B Bonds, you will please cause the Series 2005 B Bonds to be authenticated and registered by an authorized officer, as Bond Registrar for the Series 2005 B Bonds, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated as of the date first written above.

CITY OF MOUNDSVILLE

A handwritten signature in cursive script, appearing to read "Dennis L. Waller". The signature is written in black ink and is positioned above a horizontal line.

Vice Mayor

12/15/05  
636290.00001



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MOUNDSVILLE  
WATER REVENUE BOND, SERIES 2005 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$4,900,000

No. AR-1

Date: December 21, 2005

FOR VALUE RECEIVED, the CITY OF MOUNDSVILLE (the "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000), plus interest on the unpaid principal balance at the rate of 4.25 % per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$21,707, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the

regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for refunding the Prior Notes and financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the net revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions 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, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19 of the West Virginia Code, as amended (the "Act"), and an Ordinance of the Borrower duly enacted on November 1, 2005, and a Supplemental Resolution of the Borrower duly adopted on December 13, 2005, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED DECEMBER 21, 2005, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,745,000.

IN WITNESS WHEREOF, the CITY OF MOUNDSVILLE has caused this Bond to be executed by its Mayor and City Manager, and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, all as of the date hereinabove written.

[CORPORATE SEAL]

CITY OF MOUNDSVILLE  
(Name of Borrower)

*Thomas Walla*  
(Signature of Executive Official)

Vice Mayor  
(Title of Executive Official)

*Charles Underhill*  
(Signature of Executive Official)

City Manager  
(Title of Executive Official)

Post Office Box E  
(P.O. Box No. or Street Address)

Moundsville, West Virginia 26041  
(City, State and Zip Code)

ATTEST:  
*Andrew G. Hewitt*  
(Signature of Attesting Official)

City Clerk  
(Title of Attesting Official)

APPROVED AS TO FORM AND CORRECTNESS:

*Thomas Walla*  
City Attorney

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$ 1,098,000	12/21/05	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ \_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to \_\_\_\_\_  
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 Borrower with full power of substitution in the  
premises.

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

In presence of:

\_\_\_\_\_



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MOUNDSVILLE  
WATER REVENUE BONDS,  
SERIES 2005 B  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. BR-1

\$ 9,745,000

**SPECIMEN**

KNOW ALL MEN BY THESE PRESENTS: That on this ~~5~~ day of December, 2005, the CITY OF MOUNDSVILLE, a municipal corporation and political subdivision of the State of West Virginia in Marshall 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 NINE MILLION SEVEN HUNDRED FORTY FIVE THOUSAND DOLLARS (\$9,745,000), in annual installments on October 1 of each year, commencing October 1, 2008, as set forth on the "Debt Service Schedule" 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 therefore, and until payment of such installment, such interest shall be payable semiannually on April 1 and October 1 in each year, commencing April 1, 2006. In the event of a default, the amount of such default shall bear interest at the rate of this Bond, plus 2%, from the date of default to the date of payment thereof, and the defaulted interest shall be paid from the first deposits made by the Issuer to the Paying Agent.

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 The Huntington National Bank, 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 by and between the Issuer and the Authority, dated December 21, 2005.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on November 1, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED DECEMBER 21, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,900,000 (THE "SERIES 2005 A BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Series 2005 A Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2005 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory 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 Gross Revenues, the moneys in the Series 2005 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond

Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for all operating expenses 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, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2005 A Bonds; provided however, that so long as there exists in the Series 2005 B 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 any other obligations outstanding on a parity with the Bonds, including the Series 2005 A 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 and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other

obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, ordinances 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 MOUNDSVILLE has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the date first written above.

[SEAL]

  
\_\_\_\_\_  
Vice Mayor

  
\_\_\_\_\_  
City Manager

**SPECIMEN**

ATTEST:

  
\_\_\_\_\_  
City Clerk

**SPECIMEN**

APPROVED AS TO FORM AND CORRECTNESS:

  
\_\_\_\_\_  
City Attorney

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 B 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: December 21, 2005.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

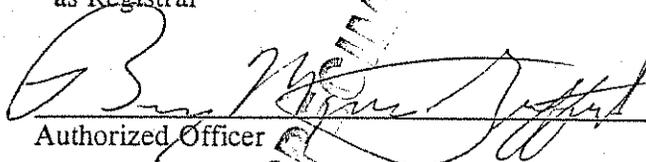
  
Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

**\$9,745,000**

City of Moundsville (West Virginia)

30 Years (LP-IV 2005 Series B-IV Loan)

Closing Date: December 21, 2005

**Debt Service Schedule**

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I
04/01/2006	-	-	140,761.11	140,761.11
10/01/2006	-	-	253,370.00	253,370.00
04/01/2007	-	-	253,370.00	253,370.00
10/01/2007	-	-	253,370.00	253,370.00
04/01/2008	-	-	253,370.00	253,370.00
10/01/2008	161,657.00	5.200%	253,370.00	415,027.00
04/01/2009	-	-	249,166.92	249,166.92
10/01/2009	170,063.00	5.200%	249,166.92	419,229.92
04/01/2010	-	-	244,745.28	244,745.28
10/01/2010	178,906.00	5.200%	244,745.28	423,651.28
04/01/2011	-	-	240,093.72	240,093.72
10/01/2011	188,209.00	5.200%	240,093.72	428,302.72
04/01/2012	-	-	235,200.29	235,200.29
10/01/2012	197,996.00	5.200%	235,200.29	433,196.29
04/01/2013	-	-	230,052.39	230,052.39
10/01/2013	208,292.00	5.200%	230,052.39	438,344.39
04/01/2014	-	-	224,636.80	224,636.80
10/01/2014	219,123.00	5.200%	224,636.80	443,759.80
04/01/2015	-	-	218,939.60	218,939.60
10/01/2015	230,517.00	5.200%	218,939.60	449,456.60
04/01/2016	-	-	212,946.16	212,946.16
10/01/2016	242,504.00	5.200%	212,946.16	455,450.16
04/01/2017	-	-	206,641.06	206,641.06
10/01/2017	255,115.00	5.200%	206,641.06	461,756.06
04/01/2018	-	-	200,008.07	200,008.07
10/01/2018	268,380.00	5.200%	200,008.07	468,388.07
04/01/2019	-	-	193,030.19	193,030.19
10/01/2019	282,336.00	5.200%	193,030.19	475,366.19
04/01/2020	-	-	185,689.45	185,689.45
10/01/2020	297,018.00	5.200%	185,689.45	482,707.45
04/01/2021	-	-	177,966.98	177,966.98
10/01/2021	312,463.00	5.200%	177,966.98	490,429.98
04/01/2022	-	-	169,842.95	169,842.95
10/01/2022	328,711.00	5.200%	169,842.95	498,553.95
04/01/2023	-	-	161,296.46	161,296.46
10/01/2023	345,804.00	5.200%	161,296.46	507,100.46
04/01/2024	-	-	152,305.56	152,305.56
10/01/2024	363,786.00	5.200%	152,305.56	516,091.56
04/01/2025	-	-	142,847.12	142,847.12
10/01/2025	382,702.00	5.200%	142,847.12	525,549.12
04/01/2026	-	-	132,896.87	132,896.87
10/01/2026	402,603.00	5.200%	132,896.87	535,499.87
04/01/2027	-	-	122,429.19	122,429.19
10/01/2027	423,538.00	5.200%	122,429.19	545,967.19

**\$9,745,000**

City of Moundsville (West Virginia)

30 Years (LP-IV 2005 Series B-IV Loan)

Closing Date: December 21, 2005

**Debt Service Schedule**

Part 2 of 2

Date	Principal	Coupon	Interest	Total P+I
04/01/2028	-	-	111,417.20	111,417.20
10/01/2028	445,562.00	5.200%	111,417.20	556,979.20
04/01/2029	-	-	99,832.59	99,832.59
10/01/2029	468,731.00	5.200%	99,832.59	568,563.59
04/01/2030	-	-	87,645.58	87,645.58
10/01/2030	493,105.00	5.200%	87,645.58	580,750.58
04/01/2031	-	-	74,824.85	74,824.85
10/01/2031	518,747.00	5.200%	74,824.85	593,571.85
04/01/2032	-	-	61,337.43	61,337.43
10/01/2032	545,722.00	5.200%	61,337.43	607,059.43
04/01/2033	-	-	47,148.66	47,148.66
10/01/2033	574,099.00	5.200%	47,148.66	621,247.66
04/01/2034	-	-	32,222.09	32,222.09
10/01/2034	603,953.00	5.200%	32,222.09	636,175.09
04/01/2035	-	-	16,519.31	16,519.31
10/01/2035	635,358.00	5.200%	16,519.31	651,877.31
<b>Total</b>	<b>\$9,745,000.00</b>	<b>-</b>	<b>\$9,870,976.65</b>	<b>\$19,615,976.65</b>

**Yield Statistics**

Bond Year Dollars	\$189,826.47
Average Life	19.479 Years
Average Coupon	5.2000000%
Net Interest Cost (NIC)	5.2000000%
True Interest Cost (TIC)	5.2007035%
Bond Yield for Arbitrage Purposes	5.2007035%
All Inclusive Cost (AIC)	5.2007035%

**IRS Form 8038**

Net Interest Cost	5.2000000%
Weighted Average Maturity	19.479 Years

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:  
  
\_\_\_\_\_

12/15/05  
636290.00001





Clarksburg Charleston Morgantown Martinsburg Wheeling Huntington

Bank One Center, Sixth Floor  
P.O. Box 2190  
Clarksburg, WV 26302-2190  
(304) 624-8000 (304) 624-8183 Fax  
www.steptoe-johnson.com

Writer's Contact Information

December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)

City of Moundsville  
Moundsville, West Virginia

United States Department of Agriculture  
Parkersburg, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Moundsville in Marshall County, West Virginia (the "Issuer"), of its \$4,900,000 Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), dated the date hereof (the "Bonds"), pursuant to Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on November 1, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"). We have examined the law and such certified copies of proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon the representations of the Issuer contained in the Bond Legislation and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing municipal corporation and a political subdivision of the State of West Virginia with full power to adopt and enact the Bond Legislation, perform the agreements on its part contained therein and issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Bond Legislation has been duly and effectively adopted and enacted by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable upon the Issuer.
3. Pursuant to the Act, the Bond Legislation creates a valid lien on the funds pledged by the Bond Legislation for the security of the Bonds on a parity with the Issuer's Water Revenue Bonds,

Series 2005 B (West Virginia Water Development Authority), issued concurrently herewith, and subject to no other prior lien granted under the Act.

4. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer, payable solely from the sources provided therefor in the Bond Legislation.

5. A portion of the proceeds of the Bonds has been applied to repay the Issuer's Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000 (the "Prior Notes"). The Prior Notes have been paid within the meaning and with the effect expressed in the Prior Notes Ordinance, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Prior Notes have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of Progressive Bank, N.A., Wheeling, West Virginia, stating that it has received payment for the entire outstanding principal of and all accrued interest on the Prior Notes and that the Prior Notes have been paid in full.

6. The Bonds have not been issued on the basis that the interest thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

7. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof, and interest on the Bonds is exempt from personal income taxes 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 Bonds and the enforceability of the Bonds, the Bond Legislation 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 the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,



STEPTOE & JOHNSON PLLC



December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

City of Moundsville  
Moundsville, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Moundsville (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$9,745,000 Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated December 21, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, with interest payable April 1 and October 1 of each year, commencing April 1, 2006, at the rate of 5.2% per annum, and with principal installments payable on October 1 of each year, commencing October 1, 2008, and maturing October 1, 2035, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on November 1, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized

terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

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

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, 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 Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Gross Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Gross Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), dated December 21, 2005, issued concurrently herewith in the original aggregate principal amount of \$4,900,000, all in accordance with the terms of the Bonds and the Bond Legislation.

5. The Bonds have not been issued on the basis that the interest thereon is or will be excluded from gross income of the owners thereof for federal income tax purposes; therefore, the interest on the Bonds is not excluded from gross income for federal

City of Moundsville, et al.

Page 3

income tax purposes. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Bonds is exempt from personal income taxes 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 Bonds and the enforceability of the Bonds, the Loan Agreement and the Bond Legislation, 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 Bond numbered BR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,



STEPTOE & JOHNSON PLLC

12/15/05  
636290.00001



# *Thomas E. White*

Attorney at Law

phone: (304) 845-7008  
fax: (304) 845-7016  
e-mail: [twhite@lawyer.com](mailto:twhite@lawyer.com)

604 Sixth Street  
Moundsville, WV 26041

Barbra L. Cox, Senior Paralegal

December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)

City of Moundsville  
Moundsville, West Virginia

United States Department  
of Agriculture  
Parkersburg, West Virginia

Steptoe & Johnson PLLC  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am counsel to the City of Moundsville, a municipal corporation, in Marshall County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a Bond Ordinance duly enacted by the Issuer on November 1, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"), other documents and papers relating to the Issuer and the above-captioned Bonds of the Issuer (the "Bonds"). Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation when used herein.

I am of the opinion that:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project and enact the Bond Legislation, all under the Act and other applicable provisions of law.

2. The Mayor, City Manager, and City Clerk and members of council of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer. The power to supervise and control the waterworks system of the Issuer has been conferred by Article 145 of the Issuer's Administrative Code to the Moundsville Water Board (the "Board").

3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Bond Legislation, 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, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

5. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds and the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

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

Very truly yours,



Thomas E. White, Esquire



# *Thomas E. White*

Attorney at Law

phone: (304) 845-7008  
fax: (304) 845-7016  
e-mail: [twhite@lawyer.com](mailto:twhite@lawyer.com)

604 Sixth Street  
Moundsville, WV 26041

Barbra L. Cox, Senior Paralegal

December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

City of Moundsville  
Moundsville, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Step toe & Johnson PLLC  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am counsel to the City of Moundsville, a municipal corporation, in Marshall County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinions of Step toe & Johnson PLLC, as bond counsel, a loan agreement for the Series 2005 B Bonds dated December 21, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), the Bond Ordinance duly enacted by the Issuer on November 1, 2005, as supplemented by the Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"), and other documents, papers, agreements, instruments and certificates relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project and enact the Bond Legislation, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.
3. The Mayor, City Manager, and City Clerk and members of the council of the Issuer have been duly, lawfully and properly appointed and elected, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer. The power to supervise and control the

waterworks system of the Issuer has been conferred by Article 145 of the Issuer's Administrative Code to the Moundsville Water Board (the "Board").

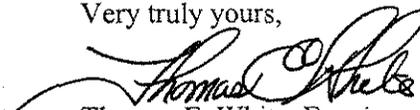
4. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Bond Legislation and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

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

Very truly yours,



Thomas E. White, Esquire



LAW OFFICES  
BACHMANN, HESS, BACHMANN & GARDEN, P.L.L.C.

1226 CHAPLINE STREET  
P.O. BOX 351  
WHEELING, WEST VIRGINIA 26003-0046  
  
(304) 233-3511

CARL G. BACHMANN (1890-1980)  
LESTER C. HESS (1903-1971)  
JOHN B. GARDEN (1925-1994)

GILBERT S. BACHMANN  
LESTER C. HESS, JR.  
JOHN L. ALLEN  
PAUL T. TUCKER  
JEFFREY R. MILLER  
ANTHONY I. WERNER  
JEFFREY A. GROVE  
DAVID L. DELK, JR.\*  
ELIZABETH ABRAHAM DELK

TELEFAX (304) 233-3199

December 21, 2005

\*ALSO ADMITTED IN OHIO

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

City of Moundsville  
Moundsville, West Virginia

Moundsville Water Board  
Moundsville, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

United States Department of Agriculture  
Parkersburg, West Virginia

Steptoe & Johnson PLLC  
Clarksburg, West Virginia

Ladies and Gentlemen:

We are counsel to the Moundsville Water Board (the "Board"), a municipal water board existing under Article 145 of the Administrative Code (the "Administrative Code") of the City of Moundsville, West Virginia (the "Issuer"). As such counsel, we have examined copies of the approving opinions of Steptoe & Johnson PLLC, as bond counsel, the opinion of Thomas E. White, as counsel to the Issuer, a loan agreement dated December 21, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), the Bond Ordinance duly enacted by the Issuer on November 1, 2005, as supplemented by the Supplemental Resolution duly adopted by the Issuer on December 13, 2005 (collectively, the "Bond Legislation"), and other documents

December 21, 2005

Page 2

relating to the above-captioned Bonds of the Issuer (the "Bonds"). Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

We are of the opinion that:

1. The Board is a municipal water board, duly created by the Issuer and validly existing under the laws of the State of West Virginia and the Administrative Code of the Issuer, and the members and officers of the Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Board in their respective capacities.

2. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Bond Legislation 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 Board, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Board is a party or by which the Board or its properties are bound or any existing law, regulation, court order or consent decree to which the Board is subject.

3. The Board has received all permits, licenses, approvals, exemptions, consents, registrations, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, and the operation of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Bureau for Public Health, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia.

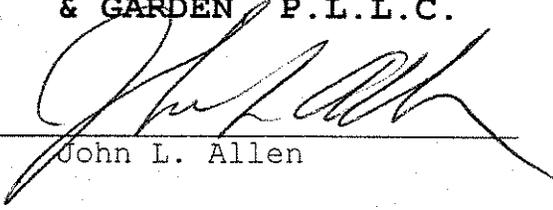
4. To the best of our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, or in any way questioning or affecting the existence of the Board, the organization of the Board, or the titles of the officers and members of the Board to their respective offices, or contesting the powers or authority of the Board, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds, the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

December 21, 2005  
Page 3

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

**BACHMANN, HESS, BACHMANN  
& GARDEN, P.L.L.C.**

By:



\_\_\_\_\_

John L. Allen

JLA:sjs



LAW OFFICE OF  
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December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

City of Moundsville  
Moundsville, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

United States Department of Agriculture  
Parkersburg, West Virginia

Steptoe & Johnson PLLC  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am special counsel to the City of Moundsville (the "Issuer"), in connection with certain matters before the Public Service Commission of West Virginia (the "PSC"), and in connection with the review of the construction contracts, performance, payment, and surety bonds, and insurance policies for the project financed by the above-captioned bonds (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance duly enacted by the Issuer on November 1, 2005 (as supplemented, the "Bond Legislation"). As such counsel, I am of the opinion that:

(1) The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including (i) the Commission Order entered on October 31, 2005, as amended by the Commission Corrective Order entered on November 7, 2005, in Case No. 03-1974-W-CN-PW, among other things, granting to the Issuer a certificate of convenience and necessity for the Project and approving the financing for the Project and (ii) the Commission Order entered October 31, 2005, in Case No. 05-0641-W-MA, setting forth the water rates and charges for the System. The time for appeal of both such Orders has expired prior to the date hereof without any appeal. The referenced Orders remain in full force and effect.

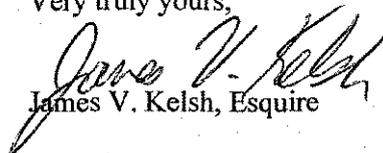
(2) With the exception described below relative to the provision of a surety bond for the benefit of the West Virginia Department of Environmental Protection, Division of Land Restoration, Office of Abandoned Mine Lands & Reclamation (the "DEP"), all successful bidders for the Project and/or

the Issuer as the case may be, have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, with the exception described below, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of all applicable provisions of law, the Bond Legislation, the Letter of Conditions, and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

As of the date hereof, a surety bond has not been provided which names DEP as an insured party. Proceeds of the \$1,400,000 DEP grant for this project cannot be advanced until such time as said surety bond has been provided. The Issuer, Shook, Inc., the general contractor for the project, and DEP have agreed to proceed with due diligence to make such arrangements as may be necessary to provide DEP with the necessary surety bond. At such time as the surety bond has been provided for the benefit of DEP, all necessary insurance and bonding arrangements for the project will have been duly provided for.

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

Very truly yours,

  
James V. Kelsh, Esquire



LAW OFFICES  
BACHMANN, HESS, BACHMANN & GARDEN, P.L.L.C.

1226 CHAPLINE STREET

P.O. BOX 351

WHEELING, WEST VIRGINIA 26003-0046

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CARL G. BACHMANN (1890-1980)

LESTER C. HESS (1903-1971)

JOHN B. GARDEN (1925-1994)

GILBERT S. BACHMANN

LESTER C. HESS, JR.

JOHN L. ALLEN

PAUL T. TUCKER

JEFFREY R. MILLER

ANTHONY I. WERNER

JEFFREY A. GROVE

DAVID L. DELK, JR.\*

ELIZABETH ABRAHAM DELK

\*ALSO ADMITTED IN OHIO

December 21, 2005

City of Moundsville  
Municipal Building  
800 Sixth Street  
Moundsville, WV 26041

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

Steptoe & Johnson, PLLC  
Bank One Center, Sixth Floor  
P.O. Box 2190  
Clarksburg, WV 26302-2190

Re: Final Title Opinion for City of Moundsville

Ladies and Gentlemen:

We are counsel to the City of Moundsville (the "Issuer") in connection with a proposed project to construct the Water Treatment Facility (the "Project"). We provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Water Development Authority for the Project. Please be advised of the following:

1. The Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the West Virginia Bureau for Public Health.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

3. We have investigated and ascertained the location of, and are familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared Gwin Dobson & Foreman, Inc. the consulting engineers for the Project.

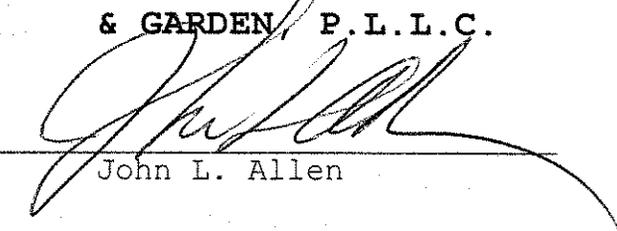
City of Moundsville  
West Virginia Water Development Authority  
Steptoe & Johnson, PLLC  
December 21, 2005  
Page 2

4. We have examined the records on file in the Office of the Clerk of The County Commission of Marshall County, West Virginia, the county in which the Project is to be located, and, in our opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of The County Commission of Marshall County to protect the legal title to and interest of the Issuer.

**BACHMANN, HESS, BACHMANN  
& GARDEN, P.L.L.C.**

By:

  
John L. Allen

JLA:sjs

FINAL TITLE OPINION ALL PROPERTIES

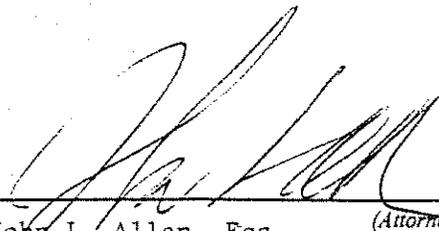
LOAN APPLICANT The City of Moundsville	ADDRESS OR PROPERTY COVERED BY THIS OPINION Moundsville	
APPLICANT FOR TITLE EXAMINATION Moundsville Water Board	COUNTY Marshall	STATE WV

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to December 21, 2005, at 9:00 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in The City of Moundsville
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid \_\_\_\_\_ Statutory lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

December 21, 2005

*(Date)*

  
\_\_\_\_\_  
*(Attorney's signature)*

John L. Allen, Esq.  
1226 Chapline St.  
P.O. Box 351  
Wheeling, WV 26003

*(Address, include ZIP Code)*

Attachments

## OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAY

Date December 21, 2005

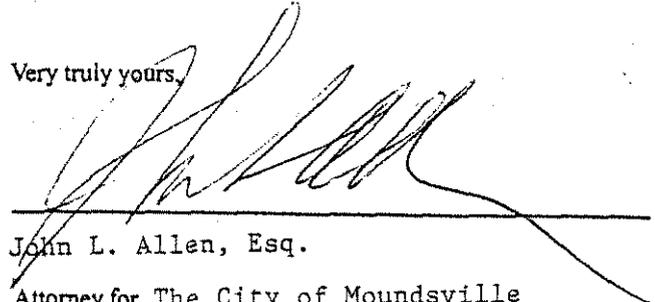
Dear Sir:

I have reviewed the action taken by The City of Moundsville (hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way Certificate," executed by the Corporation on n/a, 19     . I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate."

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.
- C. Exceptions: None

Very truly yours,


  
 \_\_\_\_\_  
 John L. Allen, Esq.

 \_\_\_\_\_  
 Attorney for The City of Moundsville



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture)

COMBINED CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. AUTHORIZATION AND AWARD OF BOND
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES, ETC.
6. CERTIFICATION OF COPIES OF DOCUMENTS
7. INCUMBENCY AND OFFICIAL NAME, ETC.
8. MOUNDSVILLE WATER BOARD
9. DELIVERY AND PAYMENT AND USE OF PROCEEDS
10. LAND AND RIGHTS-OF-WAY
11. MEETINGS; PUBLICATION AND POSTING OF NOTICES, ETC.
12. CONTRACTORS' INSURANCE, ETC.
13. CONNECTIONS, ETC.
14. MANAGEMENT
15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
16. RATES OF THE SYSTEM
17. GRANTS
18. CONFLICT OF INTEREST
19. EXECUTION OF COUNTERPARTS

On this 21st day of December, 2005, we the undersigned Vice Mayor, City Manager, and City Clerk of the City of Moundsville, in Marshall County, West Virginia (the "Issuer"), and the undersigned Counsel to the Issuer, and the Counsel to the Board hereby state and certify in connection with the City of Moundsville Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), No. AR-1, dated the date hereof, fully registered, in the principal amount of \$4,900,000 (the "Series 2005 A Bonds"), as follows:

1. AUTHORIZATION AND AWARD OF BOND: The undersigned are authorized to execute this certificate on behalf of the Issuer and are knowledgeable with respect to the matters set forth herein. The entire issue of the Series 2005 A Bonds has been duly awarded to the United States of America, acting by the United States Department of Agriculture, Rural Utilities Service (the "Purchaser"), pursuant to a Letter of Conditions from the Purchaser, dated April 27, 2005, the Ordinance of the Issuer duly enacted on November 1, 2005, and the Supplemental Resolution duly adopted on December 13, 2005, authorizing

issuance of the Series 2005 A Bonds (collectively, the "Ordinance" or "Bond Ordinance"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning as defined in the Bond Ordinance when used herein. The Series 2005 A Bonds are being issued on this date to: (i) refund the Issuer's Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000 (the "Prior Notes"); and (ii) finance a portion of the cost of the acquisition and construction of the Project, herein defined and described, located within the boundaries of the Issuer.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance and delivery of the Series 2005 A Bonds or receipt of any grant moneys, if any, committed for the System, hereinafter defined; nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2005 A Bonds; nor in any way questioning or affecting the validity of the grants, if any, committed for the System or the validity of the Series 2005 A Bonds or any provisions made or authorized for the payment thereof, including, without limitation, the pledge or application of any moneys or security therefor; nor questioning the existence, powers or proceedings of the Issuer or the Council of the Issuer (the "Governing Body") or the title of the members and officers thereof to their respective offices; nor questioning the proposed construction of a water treatment plant by the Issuer (the "Project"), a portion of the cost of which is being financed out of the proceeds of sale of the Series 2005 A Bonds; nor questioning the rates and charges provided for services of the System.

3. GOVERNMENTAL APPROVALS: All applicable and necessary approvals, permits, authorizations, registrations, exemptions, consents and certificates required by law for the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2005 A Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project were solicited in accordance with Chapter 5, Article 22, Section 1 of the Official West Virginia Code of 1931, as amended.

The Issuer has received the Commission Order of the Public Service Commission of West Virginia entered on October 31, 2005, as amended by the Commission Corrective Order entered November 7, 2005, in Case No. 03-1974-W-CN-PW, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The Issuer has also received the Commission Order entered on October 31, 2005, as amended by the Commission Corrective Order entered November 7, 2005, in Case No. 05-0641-W-MA, whereby the Public Service Commission set the approved rates and charges for use by the System. The time for appeal of such Orders has expired prior to the date hereof without any appeal. Such Orders 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 by the Purchaser of a loan to assist in the acquisition and construction of the Project.

The Issuer's Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000 (the "Prior Notes"), will be refunded by the proceeds of the Series 2005 A Bonds.

After the refunding of the Prior Notes and other than the Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), issued simultaneously herewith in the aggregate principal amount of \$9,745,000 (the "Series 2005 B Bonds"), there are no outstanding bonds or obligations of the Issuer which are secured by the Gross Revenues of the System. The Series 2005 A Bonds and the Series 2005 B Bonds shall be issued on a parity with each other with respect to liens, pledge and source of and security for payment.

5. SIGNATURES, ETC.: The undersigned Mayor, City Manager, and City Clerk did, for the Issuer on the date hereof, officially execute and seal the Series 2005 A Bonds with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and said officers are the duly elected or appointed (as applicable), qualified and serving officers as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2005 A Bonds for the Issuer.

6. 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 or changed in any way unless modification appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

USDA Letter of Conditions, with all amendments

Loan Agreement for Series 2005 B Bonds

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

Charter and Administrative Code Creating Water Board

Oaths of Office of Issuer's Officers, Councilmembers, and Water Board Members

Order of Public Service Commission Establishing Water Rates

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution and Rules of Procedure

Rules of Procedure

Office of Environmental Health Services Permit

Evidence of Abandoned Mine Lands Grant

Evidence of State and Tribal Assistance Grant

Evidence of Insurance

Receipt of Payment of the Prior Notes

7. INCUMBENCY AND OFFICIAL NAME, ETC.: The proper corporate title of the Issuer is "City of Moundsville". The Issuer is a municipal corporation and political subdivision of the State of West Virginia, in Marshall County of said State. The governing body of the Issuer is its Council consisting of 7 council members, one of whom is annually appointed by the Council as Mayor, all duly elected or appointed (as applicable), qualified and acting, 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>
Ralph DiRemigio	- Mayor and Councilmember	07/01/2003	12/30/2006
Dennis Wallace	- Vice Mayor and Councilmember	01/01/2005	12/30/2008

K. Mark Simms	-	Councilmember	01/01/2005	12/30/2008
David Oiler	-	Councilmember	07/01/2003	12/30/2006
Wayne Lemasters	-	Councilmember	01/01/2005	12/30/2008
David Haynes	-	Councilmember	05/17/2005	12/30/2006
Dick Ward	-	Councilmember	01/01/2005	12/30/2008

The duly appointed and acting City Manager and City Clerk of the Issuer are Allen Hendershot and Sondra J. Hewitt, respectively. The duly appointed and acting Counsel for the Issuer is Thomas E. White, Esquire, Moundsville, West Virginia.

8. **MOUNDSVILLE WATER BOARD:** The Issuer has duly created the Moundsville Water Board (the "Board"), pursuant to Article 145 of its Administrative Code. The Board is charged with the responsibility to supervise and control the waterworks system of the City of Moundsville.

The Board is composed of three voting members appointed by City Council, with the City Manager and the Mayor of the City as the two non-voting members. The voting Board members and their terms of office are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Thomas Ferris	-Member (Chairman)	07/15/1997	07/15/2006
David Haynes	-Member (Vice-Chair)	01/20/2004	07/15/2008
James Stultz	-Member (Sec./Treas.)	07/15/2001	07/15/2007

The duly appointed and acting Counsel to the Board is Bachman, Hess, Bachman & Garden, PLLC, Wheeling, West Virginia. The duly appointed and acting PSC Counsel to the Issuer and the Board is James V. Kelsh, Charleston, West Virginia.

9. **DELIVERY AND PAYMENT AND USE OF PROCEEDS:** On the date hereof, the Series 2005 A Bonds were delivered to the Purchaser at Moundsville, West Virginia, by the undersigned Vice Mayor and City Manager for the purposes set forth herein, and at the time of such delivery, the Series 2005 A Bonds had been duly and fully executed and sealed on behalf of the Issuer in accordance with the Ordinance.

At the time of delivery of the Series 2005 A Bonds, the undersigned Vice Mayor received \$1,098,000, being a portion of the principal amount of the Series 2005 A Bonds. Further advances of the balance of the principal amount of the Series 2005 A Bonds will be paid to the Issuer as acquisition and construction of the Project progresses.

The Series 2005 A Bonds are dated the date hereof, and interest on advances of the principal thereof at the rate of 4.25% per annum is payable from the date of each respective advance.

The Series 2005 A Bonds and the entire proceeds thereof will be used for the purposes herein set forth and for no other purposes.

10. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition, construction, operation and maintenance of the Project and 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 Series 2005 A Bonds.

11. MEETINGS; PUBLICATION AND POSTING OF NOTICES, 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 and the System were authorized or adopted at 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.

12. CONTRACTORS' INSURANCE, ETC.: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions of the Purchaser, as amended, and the Ordinance.

As of the date hereof, a surety bond has not been provided which names DEP as an insured party. Proceeds of the \$1,400,000 DEP grant for this project cannot be advanced until such time as said surety bond has been provided. The Issuer, Shook, Inc., the general contractor for the project, and DEP have agreed to proceed with due diligence to make such arrangements as may be necessary to provide DEP with the necessary surety bond. At such time as the surety bond has been provided for the benefit of DEP, all necessary insurance and bonding arrangements for the project will have been duly provided for.

13. CONNECTIONS, ETC.: The Issuer has provided evidence that there will be at least 4,571 bona fide users to be served by the System upon the completion of the Project, in full compliance with the requirements and conditions of the Purchaser.

14. MANAGEMENT: The Issuer has heretofore delivered to the Purchaser a plan concerning operation and management of the System, which plan was found to be acceptable by the Purchaser.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond 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, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the Moundsville Daily Echo, a newspaper published and of general circulation in the City of Moundsville, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Series 2005 A Bonds described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 1st day of November, 2005, at 6:30 p.m., at the City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

16. RATES OF THE SYSTEM: The Public Service Commission of West Virginia has entered a Commission Order dated October 31, 2005, in Case Number 05-0641-W-MA setting the rates and charges of the Issuer's water system. Tariff I of the water rates is effective for all service rendered on and after the end of the suspension period for the Issuer's increased rates. Tariff II of the water rates becomes effective for all service rendered by the Issuer upon completion of the construction associated with the Project. The time for appeal of such order has expired prior to the date hereof without any appeal. Such Order remains in full force and effect.

17. GRANTS: As of the date hereof, the Abandoned Mine Lands Grant in the amount of \$1,400,000, and the State and Tribal Assistance Grant in the amount of \$2,168,300 are committed and in full force and effect.

18. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the Board 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 Series 2005 A Bonds, the Bond Ordinance and/or the Project, including, without limitation, with respect to the Depository Bank, as defined in the Bond Ordinance. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

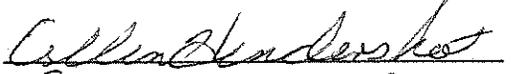
19. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official corporate seal of the CITY OF MOUNDSVILLE as of the date first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

	Vice Mayor
	City Manager
	City Clerk
	Counsel to the Issuer
	Counsel to the Board

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 B (West Virginia Water Development Authority)

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
7. MOUNDSVILLE WATER BOARD
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS, ETC.
10. CONTRACTORS' INSURANCE, ETC.
11. LOAN AGREEMENT
12. RATES OF THE SYSTEM
13. SIGNATURES AND DELIVERY
14. BOND PROCEEDS
15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
16. PUBLIC SERVICE COMMISSION ORDERS
17. SPECIMEN BONDS
18. CONFLICT OF INTEREST
19. GRANTS
20. PROCUREMENT OF ENGINEERING SERVICES
21. EXECUTION OF COUNTERPARTS

On this 21st day of December, 2005, we, the undersigned Vice Mayor, City Manager, and City Clerk of the City of Moundsville in Marshall County, West Virginia (the "Issuer"), and the undersigned Counsel to the Issuer and the Counsel to the Board hereby certify in connection with the Issuer's Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), dated the date hereof (the "Series 2005 B Bonds" or the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer duly enacted November 1, 2005, and the Supplemental Resolution duly adopted December 13, 2005 (collectively, the "Bond Legislation").

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 and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Gross Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of Gross Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

The Issuer's Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000 (the "Prior Notes"), will be refunded by the proceeds of the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), issued concurrently herewith in the aggregate principal amount of \$4,900,000 (the "Series 2005 A Bonds").

*After the refunding of the Prior Notes and other than the Series 2005 A Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by the Gross Revenues of the System. The Series 2005 A Bonds and the Series 2005 B Bonds are issued on a parity with each other with respect to liens, pledge and source of and security for payment.*

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 or changed in any way unless modification appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

USDA Letter of Conditions, with all amendments

Loan Agreement for Series 2005 B Bonds

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

Charter and Administrative Code Creating Water Board

Oaths of Office of Issuer's Officers, Councilmembers and Water Board Members

Order of Public Service Commission Establishing Water Rates

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution and Rules of Procedure

Rules of Procedure

Office of Environmental Health Services Permit

Evidence of Abandoned Mine Lands Grant

Evidence of State and Tribal Assistance Grant

Evidence of Insurance

Receipt of Payment of the Prior Notes

6. INCUMBENCY AND OFFICIAL NAME, ETC.: The proper corporate title of the Issuer is "City of Moundville". The Issuer is a municipal corporation and

political subdivision of the State of West Virginia, in Marshall County of said State. The governing body of the Issuer is its Council consisting of 7 council members, one of whom is annually appointed by the Council as the Mayor, all duly elected or appointed (as applicable), qualified and acting, 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>
Ralph DiRemigio	- Mayor and Councilmember	07/01/2003	12/30/2006
Dennis Wallace	- Vice Mayor and Councilmember	01/01/2005	12/30/2008
K. Mark Simms	- Councilmember	01/01/2005	12/30/2008
David Oiler	- Councilmember	07/01/2003	12/30/2006
Wayne Lemasters	- Councilmember	01/01/2005	12/30/2008
David Haynes	- Councilmember	05/17/2005	12/30/2006
Dick Ward	- Councilmember	01/01/2005	12/30/2008

The duly appointed and acting City Manager and City Clerk of the Issuer are Allen Hendershot and Sondra J. Hewitt, respectively. The duly appointed and acting Counsel for the Issuer is Thomas E. White, Esquire, Moundsville, West Virginia.

7. **MOUNDSVILLE WATER BOARD:** The Issuer has duly created the Moundsville Water Board (the "Board"), pursuant to Article 145 of its Administrative Code. The Board is charged with the responsibility to supervise and control the waterworks system of the City of Moundsville.

The Board is composed of three voting members appointed by City Council, with the City Manager and the Mayor of the City as the two non-voting members. The voting Board members and their terms of office are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Thomas Ferris	-Member (Chairman)	07/15/1997	07/15/2006
David Haynes	-Member (Vice-Chair)	01/20/2004	07/15/2008
James Stultz	-Member (Sec./Treas.)	07/15/2001	07/15/2007

The duly appointed and acting Counsel to the Board is Bachman, Hess, Bachman & Garden, PLLC, Wheeling, West Virginia. The duly appointed and acting PSC Counsel to the Issuer and the Board is James V. Kelsh, Charleston, West Virginia.

8. 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.

9. 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 issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of 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 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.

10. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation and Loan Agreement will be in full force and effect.

As of the date hereof, a surety bond has not been provided which names DEP as an insured party. Proceeds of the \$1,400,000 DEP grant for this project cannot be advanced until such time as said surety bond has been provided. The Issuer, Shook, Inc., the general contractor for the project, and DEP have agreed to proceed with due diligence to make such arrangements as may be necessary to provide DEP with the necessary surety bond. At such time as the surety bond has been provided for the benefit of DEP, all necessary insurance and bonding arrangements for the project will have been duly provided for.

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 dates 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 OF THE SYSTEM: The Public Service Commission of West Virginia has entered a Commission Order dated October 31, 2005, in Case Number 05-0641-W-MA setting the rates and charges of the Issuer's water system. Tariff I of the water rates is effective for all service rendered on and after the end of the suspension period for the Issuer's increased rates. Tariff II of the water rates becomes effective for all service rendered by the Issuer upon completion of the construction associated with the Project. The time for appeal of such order has expired prior to the date hereof without any appeal. Such Order remains in full force and effect.

13. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Vice Mayor and City Manager did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

14. BOND PROCEEDS: On the date hereof, the Issuer received \$9,745,000 from the Authority, being the entire principal amount of the Series 2005 B Bonds.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond 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, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the Moundsville Daily Echo, a newspaper published and of general circulation in the City of Moundsville, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 1st day of November, 2005, at 6:30 p.m., at the City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and

the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

16. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Commission Order of the Public Service Commission of West Virginia entered on October 31, 2005, as amended by the Commission Corrective Order dated November 7, 2005, in Case No. 03-1974-W-CN-PW, among other things, granting to the Issuer a certificate of convenience and necessity for the Project and approving the financing for the Project. The time for appeal of both Orders has expired prior to the date hereof without any appeal. Such Orders remain in full force and effect.

17. SPECIMEN BONDS: Delivered concurrently herewith is a true and accurate specimen of the Bonds.

18. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the Board 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 Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

19. GRANTS: As of the date hereof, the Abandoned Mine Lands Grant in the amount of \$1,400,000, and the State and Tribal Assistance Grant in the amount of \$2,168,300 are committed and in full force and effect.

20. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of engineering services of the Consulting Engineer.

21. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official seal of the CITY OF MOUNDSVILLE as of the date first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Devin L. Wallace

Vice Mayor

Allen Bendershot

City Manager

Sandra J. Alquist

City Clerk

Thomas J. White

Counsel to the Issuer

[Signature]

Counsel to the Board

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

CERTIFICATE AS TO USE OF PROCEEDS

On this 21<sup>st</sup> day of December, 2005, the undersigned Vice Mayor and City Manager of the City of Moundsville in Marshall County, West Virginia (the "Issuer"), being two of the officials of the Issuer duly charged with the responsibility for the issuance of \$9,745,000 Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), dated December 21, 2005 (the "Series 2005 B Bonds" or the "Bonds"), hereby certify as follows:

1. We are two of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. We are familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance duly enacted by the Issuer on November 1, 2005, as supplemented (the "Bond Ordinance"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on December 21, 2005, the date on which the Bonds are being physically delivered in exchange for the principal amount of the Series 2005 B Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority"), from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2005 B Bonds were sold on December 21, 2005, to the Authority, pursuant to a loan agreement dated December 21, 2005, by and between the Issuer and the Authority, for an aggregate purchase price of \$9,745,000 (100% of par), at which time the Issuer received the entire principal amount of the Series 2005 B Bonds.

6. The Series 2005 B Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project") and (ii) paying certain costs of issuance of the Bonds and related costs. On the date hereof, the Issuer simultaneously issued its Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), dated December 21, 2005, in the principal amount of \$4,900,000 (the "Series 2005 A Bonds"), in order to: (i) refund its Waterworks System Refunding Bond Anticipation Notes, Series 2000, dated December 21, 2000 (the "Prior Note"), (ii) pay a portion of the costs of the Project, and (iii) pay certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Series 2005 B Bonds on the Project, constituting a substantial binding commitment. The acquisition and construction of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Reserve Account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before November 15, 2007. The acquisition and construction of the Project is expected to be completed by August 15, 2007.

8. The total cost of the Project is estimated at \$18,213,300. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2005 A Bonds	\$ 4,900,000
Proceeds of the Series 2005 B Bonds	\$ 9,745,000
Abandoned Mine Lands Grant	\$ 1,400,000
State and Tribal Assistance Grant	<u>\$ 2,168,300</u>
 Total Sources	 <u>\$18,213,300</u>

USES

Costs of Acquisition and Construction of the Project	\$17,060,923.06
 Costs of Issuance	 \$ 55,000
Costs of Repayment of Prior Note	\$ 1,097,376.94

Total Uses

\$ 18,213,300

9. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created or continued relative to the Series 2005 B Bonds:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2005 B Bonds Construction Trust Fund;
- (4) Series 2005 B Bonds Sinking Fund; and
- (5) Series 2005 B Bonds Reserve Account.

10. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Series 2005 B Bonds will be deposited as follows:

- (1) Series 2005 B Bonds proceeds in the amount of \$ 0 will be deposited in the Series 2005 B Bonds Sinking Fund as capitalized interest.
- (2) Series 2005 B Bonds proceeds in the amount of \$ 0 will be deposited in the Series 2005 B Bonds Reserve Account.
- (3) The balance of the proceeds of the Series 2005 B Bonds will be deposited in the Series 2005 B Bonds Construction Trust Fund and applied solely to payment of costs of the Project, including costs of issuance of the Series 2005 B Bonds and related costs.

11. Monies held in the Series 2005 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2005 B Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2005 B Bonds Sinking Fund and Series 2005 B Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2005 B Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 19 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2005 B Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 22 months from the date of issuance thereof.

15. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

16. The amount designated as costs of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

19. The proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles relative to the proceeds of the Bonds so that use of proceeds from the Bonds can be accounted for.

20. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain governmental or public purpose bonds.

23. The Issuer has either (a) funded the Series 2005 B Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2005 B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2005 B Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Monies in the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Sinking

Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

24. Other than the Series 2005 A Bonds, there are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

25. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

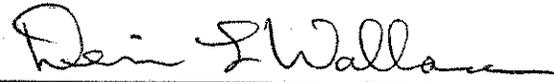
26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

27. The Issuer shall annually provide the Authority with bank statements and all investment information for the funds and accounts related to the proceeds of the Bonds.

28. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS our signatures as of the date first written above.

CITY OF MOUNDSVILLE



Vice Mayor



City Manager

12/15/05  
636290.00001



GWIN  
DOBSON &  
FOREMAN INC

CONSULTING ENGINEERS

CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture) and  
Series 2005 B (West Virginia Water Development Authority)

CERTIFICATE OF ENGINEER

I, Mark V. Glenn, Registered Professional Engineer, West Virginia License No. 13375, and President of Gwin, Dobson and Foreman, Inc., Altoona, Pennsylvania, hereby certify as follows:

1. The firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public waterworks system (the "System") of the City of Moundsville (the "Issuer") to be constructed primarily in Marshall County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (collectively, the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance adopted by the Issuer on November 1, 2005, as supplemented by the Supplemental Resolution adopted by the Issuer on December 13, 2005, the Letter of Conditions of the Rural Utilities Service (the "RUS") for the Series 2005 A Bonds, dated April 27, 2005, as amended (the "Letter of Conditions"), and the Loan Agreement for the Series 2005 B Bonds, by and between the Issuer and the West Virginia Development Authority (the "Authority"), dated December 21, 2005 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) refunding the Issuer's Waterworks System Refunding Bond Anticipation Notes, Series 2000 (the "Prior Notes"); (ii) paying a portion of the costs of acquisition and construction of the Project; and (iii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by RUS, the Authority and the West Virginia Bureau for Public Health (the "BPH"), and any change orders approved by the Issuer, RUS, the Authority, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least forty years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule A attached hereto as Exhibit A and James V. Kelsh, Esquire, special counsel to the Issuer, will, prior to the Issuer executing the construction contracts for the

Project, ascertain that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the BPH and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Dobbs, Abraham & Company, certified public accountants, as of the effective date thereof, the rates and charges for the System as established by the Public Service Commission of West Virginia will be sufficient to comply with the provisions of the Letter of Conditions and the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by RUS and the Authority; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Estimated Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on the 21st day of December, 2005.

GWIN, DOBSON & FOREMAN, INC.

(SEAL)



  
Mark V. Glenn, P.E., President  
West Virginia License No. 13375

**Schedule A**

**City of Moundsville, Marshall County, West Virginia  
Water Treatment Facility Project**

**Name of Governmental Agency: City of Moundsville**  
**Estimated Total Cost of Project Sources of Funds and Cost of Financing**

**A. Cost of Project**

1. Construction	\$ 15,788,000	
2. Technical Services	\$ 929,600	
3. Legal and Fiscal	\$ 77,000	
4. Administrative	\$ 5,000	
5. Site and Other Lands	\$ 0	
6. Step I and/or Step II or Other Loan Repayment (Specify Type)	\$ 500,000	(repay Progressive Bank interim financing for riverbank stabilization)
7. Interim Financing Costs	\$ 0	
8. Contingency	\$ 858,700	
9. Total of Lines 1-8	\$ 18,158,300	\$18,158,300

**B. Source of Funds**

10. Federal Grants	\$ 2,168,300	(STAG)
11. State Grants	\$ 1,400,000	(DEP/AML)
12. Other Grants	\$ 0	
13. Other Sources	\$ 4,900,000	(USDA RUS loan)
14. Total of Lines 10-13	\$	\$ 8,468,300
15. Proceeds Required from Bond Issue (Line 9 less line 14)	\$	\$ 9,690,000

**C. Cost of Financing**

16. Capitalized Interest (Construction period plus six months)	\$ 0
17. Funded Reserve Account	\$ 0
18. Bond Counsel	\$ 55,000
19. Other Costs	\$ 0
20. Total of Lines 16-19	\$ 55,000
21. Size of Bond Issue (Line 9 plus Line 20 minus Line 14)	\$ 9,745,000



09-16-05

Contact Person: Mark V. Glenn, P.E., President, Gwin, Dobson & Foreman, Inc.  
 Address: 3121 Fairway Drive, Altoona, PA 16602-4475  
 Telephone: 814/943-5214 Fax: 814/943-8494 E-Mail: mglenn@gdfengineers.com



**Thomas L. Dobbs**  
**Certified Public Accountant**  
**400 Morton Avenue**  
**Moundsville, WV 26041**  
**304-845-7914**  
**304-843-1905 (Fax)**

December 21, 2005

City of Moundsville  
Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture) and  
Series 2005 B (West Virginia Water Development Authority)

City of Moundsville  
Moundsville, West Virginia

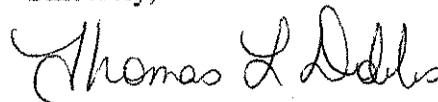
United States Department of Agriculture  
Parkersburg, West Virginia

West Virginia Water Development  
Authority  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the water rates and charges of the City of Moundsville (the "Issuer") approved and set forth in the Commission Order of the Public Service Commission of West Virginia entered on October 31, 2005, in Case Number 05-0641-W-MA, the projected operating expenses and the anticipated customer usage as furnished to us by Gwin, Dobson, & Forman, Inc., Consulting Engineer, it is our opinion that such rates and charges will be sufficient, together with other revenues of the waterworks system of the Issuer (the "System"), (i) to provide for all operating expenses 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 debt service on the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) and Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority).

Sincerely,



Thomas L. Dobbs  
Certified Public Accountant



## ARTICLE I

### INCORPORATION; FORM OF GOVERNMENT; POWERS

- Section 1. Incorporation
2. Form of Government
  3. Powers of City

#### Incorporation

# 1. The inhabitants of The City of Moundsville, Marshall County, West Virginia, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the "City of Moundsville."

#### Form of Government

# 2. The municipal government provided by this charter shall known as the "council-manager government". Pursuant to its provision and subject only to the limitations imposed by the State Constitution, the general laws of the State, and this charter, all powers of the city shall be vested in an elective council, hereinafter referred to as "the council", which shall enact local legislation, adopt budgets determine policies, and appoint the city manager, who shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by law and in this Charter.

#### Powers of the City

# 3. The city shall have all the powers now or hereafter granted to municipal corporations and to cities by the Constitution and general laws of this State, including but not limited to Chapter of the Official Code with all the implied powers necessary to carry into execution all the powers granted. The city may acquire property within or without its corporate limits for any city purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, mortgage, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of this State or restricted by

this charter, the city shall and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. The enumeration of particular powers by this charter shall not be deemed to be exclusive, and in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the city shall have and may exercise all powers which, under the Constitution of this State, it would be competent for this charter specifically to enumerate.

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Article II  
THE COUNCIL

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- Section 4. Number, selection, term
5. Qualifications
  6. Salary
  7. Presiding officer, Mayor and Vice Mayor
  8. Powers
  9. Appointment of city manager
  10. Removal of city manager
  11. Council not to interfere in appointments or removals
  12. Vacancies in council
  13. Creation of new departments or offices; change of duties
  14. City Clerk
  15. City Attorney
  16. Meetings of council
  17. Council to be judge of qualifications of its own members
  18. Rules of procedure; journal
  19. Ordinances
  20. Procedure for passage of ordinances
  21. Annual audit
  22. Merit System

Number, Selection, Term

# 4. The council shall have seven members with one elected from each ward and three elected at large as provided in Article VII, by

the Qualified voters of the city for terms of four years or until their successors have been elected and take office as provided in Section 16.

#### Qualifications

# 5. Members of Council shall be qualified electors of the City. Council members elected as Ward Council Members shall be qualified voters of the Ward for which they are elected. If a member of Council shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his or her office shall immediately become vacant.

#### Salary

# 6. The annual salary of each member of Council shall be \$1,200.00 payable monthly until changed by ordinance, but shall not be increased during the current term of the members of Council enacting such ordinance. The mayor shall receive an additional salary of \$300.00 while serving in that capacity.

#### Presiding Officer: Mayor and Vice Mayor

# 7. The council at the last regular meeting held in June of each year, shall elect one of its remaining members to serve as mayor for a term of one year commencing on the first day of July of that year. The mayor shall preside at meetings of the council and shall be recognized as head of the city government for all ceremonial and military purposes, but shall have no regular administrative duties. A person who has been elected or who has served as mayor during all or any part of two consecutive terms shall be ineligible for the office of mayor during any part of the term immediately following the second of the two consecutive terms. The council at the last regular meeting held in June of each year, shall elect one of its remaining members to serve as vice mayor for a term of one year commencing on the first day of July of that year. The vice mayor shall perform all the duties of the mayor in the event of the absence or disability of the mayor.

#### Powers

# 8. All powers of the city, the determination of all matters

of policy, and authority to pass all laws and ordinances relating to its municipal affairs shall be vested in the council. Without limitation of the foregoing, the council shall have power to:

- (1) Establish administrative departments and distribute the work of divisions, upon recommendation of the City Manager;
- (2) Adopt the city budget;
- (3) Authorize the issuance of bonds by a bond ordinance;
- (4) Inquire into the conduct of any office, department or agency of the city and make investigation as to municipal affairs;
- (5) Appoint the members of the planning commission;
- (6) Appoint the members of the zoning board of appeals;
- (7) Adopt and modify the official map of the city;
- (8) Adopt plats;
- (9) Regulate and restrict the height and number of stories of buildings and other structures, the size of yards and courts, the density of populations, and the location and use of buildings for trade, industry, business, residence or other purposes; subject, however, to the provisions of Article 24 of Chapter 8 of the Code of West Virginia, as amended;
- (10) Adopt, modify and carry out plans proposed by the Planning commission for the clearance of slum districts and rehabilitation of blighted areas;
- (11) Adopt, modify and carry out plans proposed by the planning commission for the replanning, improvement and redevelopment of neighborhoods and for the replanning, reconstruction or redevelopment of any area or district which may have been destroyed in whole or in part by disaster;
- (12) Provide for an independent audit;
- (13) At the end of each calendar year, council shall formally evaluate the performance of the City Manager and suggest items for improvement and priorities for the coming year. This shall be done in executive session as a personnel

matter:

- (14) The council may provide by ordinance for a procedure for the appeal to council of the firing or discharge of any employee not covered by the Civil Service Laws of the State of West Virginia.

Appointment of City Manager

# 9. The council shall appoint a city manager who shall have the powers and perform the duties provided in this charter. No councilmen shall receive such appointment during the term for which he shall have been elected, nor within one year after the expiration of his term.

Removal of City Manager

#10. The council shall appoint the city manager for an indefinite term and may remove him by a majority vote of its members and the appointment must be affirmed by a majority of Council every two years from the date of the appointment of the City Manager. At least thirty days before such removal shall become effective, the council shall by a majority vote of its members adopt a preliminary resolution stating the reasons for his removal. The manager may reply in writing and may request a public hearing which shall be held not earlier than twenty days nor later than thirty days after the filing of such request. After such public hearing, if one be requested and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager from duty, but shall in any case cause to be paid him forthwith any unpaid balance of his salary for the next two calendar months following the adoption of the preliminary resolution.

Council Not to Interfere in Appointments and Removals

#11. Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from office by the city manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers in the

administrative service of the city; except that the council may by ordinance provide for a procedure for the appeal to council of the firing or discharge of any employee not covered by the Civil Service law of the State of West Virginia. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. Any councilmen violating the provisions of this section shall, after due notice and a hearing, be subject to removal as a member of Council.

#### Vacancies in Council

#12. If a vacancy occurs in the Council, the council shall by a majority vote of the remaining members appoint a qualified person to fill the vacancy until the next regular election, at which time a member of council to fill the unexpired term shall be elected.

#### Creation of New Departments or Offices; Change of Duties

#13. The council by ordinance may create, change, and abolish offices, departments or agencies, other than the offices, departments and agencies established by this charter. The council by ordinance may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency.

#### City Clerk

#14. The city manager shall appoint an officer of the city who shall have the title of city clerk. The clerk shall give notice of meetings of the council, shall keep the journal of its proceedings, shall authenticate by his or her signature and record in full in a book kept for the purpose all ordinances and resolutions and shall perform such other duties as shall be required by this Charter, the Code of West Virginia, or by ordinance.

City Attorney

#15. The city manager shall appoint the city attorney, who shall be a resident of Marshall County, West Virginia and a member of the bar of Marshall County in good standing, and shall perform and discharge all duties and exercise all powers which shall be conferred upon him or her by any ordinance or resolution of the city council, and in addition he or she shall exercise the following powers:

(A) Be the legal advisor of and attorney and counsel for the city and for all of the administrative officers thereof, in respect to their official duties.

(B) Prosecute and defend all suits for or against the city, and prepare all contracts, bonds or other writings in which the city is concerned, and endorse on each, his approval of the form and correctness thereof.

(C) Be Prosecuting Attorney of the Police Court and prosecute all cases brought before such court, and perform the same duties so far as they are applicable thereto as are required of the Prosecuting Attorney of the county.

(D) The city council and all administrative officers of the city may require the opinion of the city attorney upon any question of law involving their respective powers and duties, and he or she shall furnish the same in writing.

(E) Apply in the name of the city to a court of competent jurisdiction for an order of injunction restraining the misapplication of funds of the city or the abuse of its corporate powers, or the execution or performance of any contract, made on behalf of the city in contravention of law, or which was procured by fraud or corruption.

(F) When an obligation or contract made on behalf of the city granting a right or easement, or creating a public duty, is evaded or violated, the city attorney shall require the specific performance of the duty by any administrative officer by application for a writ of mandamus to a court of competent jurisdiction. The city attorney shall receive a salary to be fixed by council. The city manager or

city council, whenever the exigencies of the business of the city require such action shall have the right to employ special counsel to assist the city attorney.

#### Meetings of Council

#16. The terms of office of newly elected members of council shall commence on the first day of July next following their election. The council shall meet regularly at such times as may be prescribed by its rules, but not less frequently than twice each month. All meetings of the council shall be open to the public.

#### Council to be Judge of Qualifications of its Members

#17. The council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and require the production of records, but the decision of the council in any such case shall be subject to review by the courts.

#### Rules of Procedure: Journal

#18. The council shall determine its own rules and order of business. It shall keep a journal of its proceedings and the journal shall be open to public inspection, on any question or issue any member of Council may require a roll call vote which shall be conducted as follows: The matter to be voted on shall be stated by the presiding officer, and each member of Council shall cast a signed ballot. The ballots shall be given to the Clerk who shall read and record the same, and announce the result.

#### Ordinances

#19. In addition to such acts as are required by statute or by this charter to be by ordinance, every act of the council establishing a fine or other penalty or providing for the expenditure of funds or for the contracting of indebtedness shall be by ordinance. The enacting clause of all ordinances shall be, "The council of the city of Moundsville hereby ordains".

#### Procedure for Passage of Ordinances

#20. Every ordinance shall be passed and enacted in accordance

with the general laws of the State of West Virginia.

Annual Audit

#21. In addition to the annual audit conducted by the State, the council may employ qualified public accountants to make an independent audit of accounts and other evidences of financial transaction of the city government.

Merit System

#22. The Council by ordinance may provide for a merit system for all or any class of city employees in addition to those classes for which a merit system is made mandatory by general law.

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Article III

THE CITY MANAGER

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- Section 23. The city manager; qualifications
- 24. The city manager; powers and duties
  - 25. Absence of city manager
  - 26. Administrative departments
  - 27. Directors of departments
  - 28. Departmental divisions

The City Manager; Qualifications

#23. The city manager shall be chosen by the council solely on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in, or his or her knowledge of, accepted practice in respect to the duties of the office as hereinafter set forth. At the time of appointment, he or she need not be a resident of the city or state, but during his or her tenure of office he or she shall reside within the city.

The City Manager; Powers and Duties

#24. The city manager shall be the chief executive officer and head of the administrative branch of the city government. He or she shall be responsible to the council for the proper administration of all affairs of the city and to that end, shall have powers and shall be required to:

(1) Appoint and, when deemed necessary or advisable, remove all officers and employees of the city except as otherwise provided by this charter or by the Code of West Virginia and except as he or she may authorize the head of a department or office to appoint and remove subordinates in such department or office;

(2) Prepare the budget annually and submit it to the council and be responsible for its administration after adoption;

(3) Prepare and submit to the council as of the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year;

(4) Keep the council advised of the financial condition and future needs of the city and make such recommendations as may seem desirable;

(5) Perform such other duties as may be prescribed by this charter or required by the council, not inconsistent with this charter.

#### Absence of City Manager

#25. The manager may designate by letter filed with the city clerk a qualified administrative officer of the city to perform his or her duties during his or her temporary absence or disability. In the event of failure of the manager to make such designation, the council may by resolution appoint an officer of the City to perform the duties of the manager until he or she shall return or the disability shall cease.

#### Administrative Departments

#26. There shall be a department of finance, a police department, fire department, and such other administrative departments as may be established by ordinance upon the recommendation of the manager.

#### Directors of Departments

#27. At the head of each department there shall be a director, who shall be an officer of the city and who shall have supervision and control of the department subject to the direction of the city manager. With the approval of Council, two or more departments may be headed by the same individual, the manager may head one or more departments, and directors of departments may also serve as chiefs

of divisions, and the compensation shall be determined by Council.

Departmental Divisions

#28. The work of each department may be distributed among such divisions thereof as may be established by ordinance upon the recommendation of the city manager. Pending the passage of an ordinance or ordinances distributing the work of departments under the supervision and control of the city manager among specific divisions thereof, the city manager may establish temporary divisions.

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Article IV

BUDGET

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Section 29. Fiscal year

- 30. Preparation and submission of budget
- 31. Budget a public record
- 32. Public hearing on budget
- 33. Vote required for adoption

Fiscal year

#29. The fiscal year of the city government shall begin on the first day of July and shall end on the last day of June of each calendar year. Such fiscal year shall also constitute the budget and accounting year. As used in this charter the term "Budget Year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Preparation and Submission of Budget

#30. The city manager, on or before February 28th of each budget year, shall submit to the council a budget and explanatory budget message. For such purpose, at such date as he shall determine, he, or an officer designated by him, shall obtain from the head of each office, department or agency estimates of revenue and expenditure of that office, department or agency, detailed by organization units and character and object of expenditure, and such other supporting data as he may request; together with an estimate of all capital projects pending or which such department head believes should be

undertaken (a) within the budget year, and (b) within five next succeeding years. In preparing the budget, the city manager shall review the estimates, shall hold hearings thereon and shall consult with the Finance Committee of Council and may revise the estimate as he may deem advisable.

Budget a Public Record

#31. The budget and budget message and all supporting schedules shall be a public record in the office of the city clerk. The city manager shall cause sufficient copies of the budget and budget message to be prepared for distribution to interested persons.

Public Hearing on Budget

#32. At the meeting of the council at which the budget and budget message are submitted, the council shall determine the place and time of the public hearing on the budget, at which all interested persons shall be given an opportunity to be heard, for or against the estimates or any item thereof. The council shall enter of record any objections so made and the reasons and grounds therefore.

Vote Required for Adoption

#33. The budget shall be adopted by the favorable votes of at least a majority of all the members of the council.

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Article V  
DEPARTMENT OF FINANCE

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- Section 34. Director of finance; appointment, qualification and salary  
35. Director of finance; powers and duties  
36. Transfers of appropriations  
37. Accounting supervision and control  
38. When contracts and expenditures prohibited  
39. Appropriations lapse at end of year  
40. Fees shall be paid to city government  
41. Competitive bidding  
42. Contracts for city improvements

Director of Finance; Appointment, Qualifications and Salary

#34. There shall be a department of finance, the Director of which shall be the city manager, or a person appointed by him.

The director of finance shall have knowledge of municipal accounting and taxation and shall have had experience in budgeting and financial control.

The annual salary of the director of finance shall be determined by the council.

Director of Finance; Powers and Duties

#35. The director of finance shall have charge of the administration of the financial affairs of the city and to that end shall have the authority and shall be required to:

(1) Compile the current expense estimates.

(2) Compile the capital estimates for the budget.

(3) Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to insure that budget appropriations are not exceeded.

(4) Maintain a general accounting system for the city government and each of its offices, departments and agencies; keep books for and exercise financial budgetary control over each office, department and agency; keep separate accounts for items of appropriation contained in the city budget, each of which accounts shall show the amount of the appropriation, the amount paid therefrom, the unpaid obligations against it and the unencumbered balance; require reports of receipts and disbursements from each receiving and spending agency of the city to be made daily or at such intervals as he may deem expediant.

(5) Submit to the council through the city manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city.

(6) Prepare, as of the end of each fiscal year, a complete financial statement and report.

(7) Collect all taxes, fees, and service charges, except those collectable by the county treasurer, special assessments, license

fees and all other revenues of the city, and receive all money receivable by the city from other levels of government, or from any court, or from any office, department or agency of the city.

(8) Have custody of all public funds belonging to or under control of the city, or any office, department or agency of the city government, and deposit all funds coming into his hands in such depositories as may be designated by resolution of the council, or, if no such resolution be adopted, by the city manager, subject to the requirements of law as to surety and the payment of interest on deposits, but all such interest shall be the property of the city and shall be accounted for and credited to the proper account.

(9) Supervise and be responsible for the purchase, storage and distribution of all supplies, materials, equipment and any other articles used by any office, department or agency of the city government.

(10) Approve all proposed expenditures; unless he shall certify that there is an unencumbered balance of appropriation and available funds, no appropriation shall be encumbered and no expenditure made.

#### Transfers of Appropriations

#36. The city manager may at any time transfer any unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department or agency; at the request of the city manager and within the last three months of the budget year, the council may by resolution transfer any unencumbered appropriation balance or portion thereof from one office, department or agency to another.

#### Accounting Supervision and Control

#37. The director of finance shall have powers and shall be required to:

(1) Prescribe the forms of receipts, requisitions, vouchers, bills or claims to be used by all the offices, departments and agencies of the city government;

(2) Examine and approve all contracts, orders and other documents by which the city government incurs financial obligations having

previously ascertained that moneys have been appropriated and allotted and will be available when the obligations shall become due and payable;

(3) Audit and approve before payment all bills, invoices, payrolls and other evidences of claims, demands or charges against the city government and with the advice of the city attorney determine the regularity, legality and correctness of such claims, demands or charges;

(4) Inspect and audit any accounts or records of financial transactions which may be maintained in any office, department or agency of the city government apart from or subsidiary to the accounts kept in his office.

#### When Contracts and Expenditures Prohibited

#38. No officer, department, or agency shall during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amounts appropriated for that general classification of expenditure pursuant to this charter. Any contract, verbal or written, made in violation of this charter shall be null and void. Any officer or employee of the city who shall violate this section shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to hold his office or employment. Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for the services for a period exceeding the budget year in which each contract is made, when such contract is permitted by law.

#### Appropriations Lapse at End of Year

#39. All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully encumbered.

#### Fees Shall be Paid to City Government

#40. All fees received by any officer or employee shall belong

to the city government and shall be paid daily to the department of finance.

Competitive Bidding

#41. Before the director of finance makes any purchase of or contract for supplies, materials or equipment, he shall give ample opportunity for competitive bidding, under such rules and regulations, and with such exceptions as the council may prescribe by Ordinance; provided, however, that the council shall not except individual contracts, purchases or sales from the requirement of competitive bidding

Contracts for City Improvements

#42. Any city improvement costing more than \$2,500.00 shall be executed by contract except where such improvement is authorized by the council to be executed directly by a city department in conformity with detailed plans, specifications and estimates. All such contracts for more than \$2,500.00 shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinance, provided the city manager shall have the power to reject all bids and advertise again. Alterations in any contract may be made when authorized by the council upon the written recommendation of the city manager. In the event of an emergency requiring immediate action the Council by Resolution may waive the requirement for competitive bidding providing that the resolution set forth the nature of the emergency and necessity for immediate action.

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Article VI

POLICE COURT

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Section 43. Appointment of Police Judge; Qualifications; Salary

44. Police Court Judge; Jurisdiction; duties and Powers

45. Temporary Judge

Appointment of Police Judge; Qualifications; Salary

#43. The city manager shall appoint as an officer of the city a person who shall have the title of police judge and who shall be

any qualified resident of the City of Moundsville. The police judge shall serve at the will and pleasure of the city manager and shall receive an annual salary as determined by the council.

Police Court Judge; Jurisdiction; Duties and Powers

#44. The police court judge shall have the following duties, jurisdiction and powers:

(A) He or she shall have charge of and preside over the municipal court of the City. He or she shall have the power to summons witnesses for the trial of any case before him or her; to compel the attendance of police officers of the city; to require of said police officers the enforcement of any order of judgment entered or rendered by him or her under the powers herein given said police court judge; and to issue executions for all fines, penalties and cost imposed by him. All cases for alleged ordinance violations may be tried by the police court judge without a jury, or with a jury if one is demanded. He or she shall have all of the powers, authorities and duties which are now or may hereafter be granted by Section 1, Article 10, Chapter 8 of the Code of West Virginia, or other statutes of the State of West Virginia.

(B) He or she shall issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with the violation of any ordinance of the city, or on a state warrant as ex-officio County Magistrate.

(C) He or she shall keep a record of all warrants issued by him or her, of all persons arrested and brought before him or her, and of all trials, fines, or sentences imposed or judgments entered by him or her in a well-bound book to be known as the Police Court Docket. A record of the entries made each day in said docket shall be signed by the police court clerk or the police court judge at the close of the day. An appeal shall lie to the circuit court or to the criminal court of Marshall County from all judgments of the police court judge wherein and in the manner an appeal from the judgment of a mayor of a city is allowed by law, or as may otherwise be provided by law.

(D) He or she shall exercise the power to punish within the

limits prescribed by the ordinances of the city or by the laws of the State of West Virginia applicable to the city and not in conflict with this charter.

Temporary Judge

#45. In the event of and during the temporary absence or disability of the police judge, the city manager shall appoint a qualified person to preside over said Court, and perform the duties of the judge thereof. The compensation of the temporary judge shall be determined by council.

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Article VII  
NOMINATIONS AND ELECTIONS

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Section 46. Municipal elections

47. Wards

48. Nominations

49. Council ballots

50. Election regulations

51. Canvass

Municipal Elections

#46. The regular election of members of the council shall be held on the first Tuesday in June in odd numbered years, the first said regular election shall be held on the first Tuesday in June, 1987. At the election to be held on the first Tuesday in June, 1987 there shall be elected one councilman from Second Ward and one councilman from the Fourth Ward and one member of council at large. At the next regular election the remainder of Council shall be elected. Special elections shall be held at such times as may be fixed by the council, or required by law or this charter.

Wards

#47. The city shall be divided into not more than four wards the boundaries of which shall be determined by the council, provided,

however, that the wards shall be as nearly equal as may be in area and populations, and each ward shall be composed of contiguous territory.

Nominations

#48. Any qualified elector of the city may be nominated for the council by petition; provided, however, that no person may be nominated for more than one office at one election.

The term "qualified elector" as used in this charter shall mean a citizen having the qualifications required by law to vote, and who has been a resident of the city for at least thirty days next preceding the election at which he desires to vote. A petition for this purpose shall be signed by not fewer than 50 qualified electors who shall be residents of the ward from which they seek to nominate a candidate, and for nomination of a candidate at large by 100 qualified electors of the city. No elector shall sign more than one petition for persons nominated by wards, and not more than one petition for each position to be filled for persons to be nominated at large, and should an elector do so, his signature shall be void except as to the petition first filed. The signatures on the nominating petition need not all be subscribed to one paper, but to each separate paper there shall be attached a signed statement of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature or mark of the person whose name it purports to be. With each signature including the signature of the circulator, shall be stated, the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form of the nominating petition shall be substantially as follows:

We, the undersigned electors of the ( \_\_\_\_\_ ward in the) \*City of Moundsville hereby nominate \_\_\_\_\_  
whose residence is \_\_\_\_\_ at large\*  
for the office of member of  
Council from the \_\_\_\_\_ ward, to be voted for at the  
election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and

we individually certify that we are qualified to vote for a candidate for the council and that we have not signed any other nominating petition for that office.

Name	Street and Number	Address from which last registered (if different)	Date of Signin
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(Spaces for signature and required date)

\*Where appropriate

\*\*Cross out one

Statement of Circulator

The undersigned is the circulator of the foregoing paper containing \_\_\_\_\_ signatures. Each signature appended thereto was made in my presence and is the genuine signature of the person whose name it purports to be.

Signature of Circulator \_\_\_\_\_

Address \_\_\_\_\_

Any signature made earlier than the first day of February next preceding the election shall be void. All nominating papers comprising a petition shall be filed as one instrument with the city clerk, not later than the 15th day of March before the election. The city clerk shall make a record of the exact time at which each petition is filed. No nominating petition shall be accepted unless accompanied by a signed acceptance of the nomination in substantially the following form:

Acceptance of Nomination

I hereby accept the nomination for the council and agree to serve if elected.

Signature of Candidate \_\_\_\_\_

All petitions so filed shall be submitted by the clerk to the council no later than its next regular meeting, for its determination as to their sufficiency. If a petition is found insufficient, the clerk shall return it immediately to the person who filed it with a statement certifying wherein the petition is found insufficient.

Within the regular time for filing petitions such a petition may be amended and filed again as a new petition (in which case the time of the first filing shall be disregarded in determining the validity of signatures thereon) or a different petition may be filed for the same candidate.

#### Council Ballots

#49. The full names of all candidates nominated for the council as hereinbefore provided, except such as may have withdrawn, died or become ineligible, shall be printed on the official ballots without party designations. If two candidates with the same surname, or with names so similar as to cause confusion, are nominated, the addresses of their places of residence shall be placed with their names on the ballots.

In the printing of the ballots the names of candidates shall be arranged so that each appears first on an equal number of ballots. The ballot shall bear instructions as to the number of candidates for whom the voter is entitled to vote. If voting machines are used, the names shall be arranged by lot, as provided by ordinance.

Unless voting machines are used, members of council shall be voted for on ballots separate and distinct from ballots used for any other office or question.

#### Election Regulations

#50. Except as otherwise provided by this charter, city elections shall be conducted and the results determined and certified in accordance with the provisions of general law governing elections, so far as they are applicable. The duties imposed by such general election laws upon County Clerks and Circuit Clerks shall as to city elections devolve upon the City Clerk, and the duties imposed by such laws upon County Courts shall devolve upon the governing body of the City. The council shall appoint three commissioners and two clerks to serve as election officials in each precinct in the city. At least three days before the date of the election the city clerk shall procure from the clerk of the county court the necessary registration records and other election supplies and shall deliver

them on the day of the election to the election officials. Ballots shall be delivered to the election officials on the day of the election. The election officials shall as soon as possible after the closing of the polls on election day return to the city clerk the ballots, tally sheets, certificates of the results of the election, registration reports, ballot boxes and all other election supplies. The council may prescribe other rules for the conduct of elections not inconsistent with general law or the provisions of this charter. The registration of voters for city elections shall be done in the manner provided by the general laws of the state pertaining to the registration of voters for municipal elections, provided, however, that the registration lists for municipal elections shall not make any reference to the political party affiliations of the registered voters.

Canvass

#51. On the first Monday following the election the council shall canvass the returns of the election and declare the result. Whenever two or more of the persons voted for have received the highest and equal number of votes for election for the same office, so that the election to the office is not decided by the returns, the council shall decide by lot which of the candidates shall be declared elected.

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Article VIII  
GENERAL PROVISIONS

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- Section 52. Removal of officers and employees
- 53. Right of city manager and other officials in council
  - 54. Investigations by city manager and council
  - 55. Publicity of records
  - 56. Personal interest
  - 57. Official bonds
  - 58. Oath of Office

59. Effect of this charter on existing law
60. Amending the charter
61. Separability clause

#### Removal of Officers and Employees

#52. Any officer or employee to whom the city manager, or head of any office, department or agency, may appoint a successor, may be removed by the manager or other appointing officer at any time. Except as otherwise provided by general law or by City Ordinance the decision of the manager, or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever.

#### Right of City Manager and other Officers in Council

#53. The city manager, the heads of all departments, and such other officers of the as may be designated by vote of the council shall be entitled to seats in the council, but shall have no vote therein. The city manager shall have the right to take part in the discussion of all matters coming before the council, and the directors and other officers shall be entitled to take part in all discussions of the council relating to their respective offices, departments or agencies.

#### Investigations by Council or City Manager

#54. The council, the city manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any offices, department, agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$500.00 or by imprisonment not to exceed six months or both.

#### Publicity of Records

#55. All records and accounts of every office, department or

agency of the city shall be open to public inspection at all reasonable times and under reasonable regulations established by the city manager, except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish.

#### Personal Interest

#56. No member of the council or any officer or employee of the city shall have a financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract or in the sale to the city or to a contractor supplying the city or any land or rights or interests in any land, material, supplies or services. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge express or implied of the person or corporation contracting with the city shall render the contract voidable by the city manager or the council. Any employee or officer of the City who shall take office as a member of Council shall forfeit his office or position.

#### Official Bonds

#57. All officers or employees as the council may by ordinance require to do so or as may be required by law shall give bond in such amount and with such surety as may be approved by the council. The premiums of such bonds shall be paid by the city.

#### Oath of Office

#58. Every officer of the city shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk:

"I solemnly swear ( or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of West Virginia, that I will, in all respects, observe the provisions of the charter and ordinances of the City of Moundsville and will faithfully discharge the duties of the office of \_\_\_\_\_ to the best of my skill and judgment".

Effect of this Charter on Existing Law

#59. (a) All laws and parts of laws relating to or affecting the City of Moundsville in force when this charter shall take effect are hereby repealed and superceded to the extent that the same are inconsistent with the provisions of this charter;

(b) Insofar as the provisions of this charter are the same in terms or in substance and effect as provisions of law in force when this charter shall take effect, relating to or affecting the City of Moundsville the provisions of this charter are intended to be not a new enactment but a continuation of such provisions of law, and this charter shall be so construed and applied.

Amending the Charter

#60. Amendments to this charter shall be made in accordance with the general laws of the State.

Separability Clause

#61. If any section or part of this charter shall be held invalid by a court of competent jurisdiction such holding shall not affect the remainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

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Article IX  
SUCCESSION IN GOVERNMENT

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- Section 62. Rights of officers and employees preserved
- 63. Continuance of present officers
  - 64. Transfer of records and property
  - 65. Continuity of offices, departments or agencies
  - 66. Continuance of contracts and public improvements
  - 67. Pending actions and proceedings
  - 68. Termination of Offices of Elective Officials

Rights of Officers and Employees Preserved

#62. Nothing in this charter contained, except as specifically provided, shall effect or impair the right or privileges of appointive officers or employees of the city or any department or agency existing at the time when this charter shall take effect and not inconsistent with the provisions of this charter, in relation to the personnel, ranks, grades, tenure of office, promotion, removal, pension and retirement rights, civil rights or any other right or privileges of appointive officers or employees of the city or any department or agency thereof.

Continuance of Present Officers

#63. All persons holding administrative office at the time this charter takes effect shall continue in office and in the performance of their duties until provisions shall have been made in accordance herewith for the performance of such duties or the discontinuance of such office. The powers conferred and the duties imposed upon any office, department or agency of this city by the laws of the state shall, if such office, department or agency, be abolished by this charter, or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the council unless otherwise provided herein.

Transfer of Records and Property

#64. All records, property and equipment whatsoever of any office, department or agency or part thereof, all the powers and duties of which are assigned to any other office, department or agency by this charter, shall be transferred and delivered to the office, department or agency to which such powers and duties are so assigned. If part of the powers and duties of any office, department or agency which are by this charter assigned to another office, department or agency, all records, property and equipment relating exclusively thereto shall be transferred and delivered to the office, department or agency to which such powers and duties are so assigned.

#### Continuity of Offices, Departments, or Agencies

#65. Any office, department or agency provided for in this charter with a name or with powers and duties the same or substantially the same as those of an office, department or agency heretofore existing shall be deemed to be a continuation of such office, department or agency and shall exercise its powers and duties in continuation of their exercise by the office, department or agency by which the same were heretofore exercised and shall have power to continue any business proceeding or other matter within the scope of its regular powers and duties commenced by any office, department or agency by which such powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to such a formerly existing office, department or agency, shall, so far as not inconsistent with the provisions of this charter, apply to such office, department or agency provided for by this charter.

#### Continuance of Contracts and Public Improvements

#66. All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or charter provisions existing at the time this charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws and charter provisions.

#### Pending Actions and Proceedings

#67. No action or proceeding, civil or criminal, pending at the time when this charter shall take effect, brought by or against the city or any office, department or agency or officer thereof, shall be affected or abated by the adoption of this charter or by anything therein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any office, department or agency or officer party thereto may be or under this charter be assigned or transferred to another office, department or agency or office, but in that event the same may be prosecuted or defended by the head of the office, department or

agency to which such function, powers and duties have been assigned or transferred by or under this charter.

Termination of Offices of Elective Officials

#68. The terms of all elective officials of the City in office on the effective date of this charter shall continue until the end of the term for which they were elected.

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Article X

DEFINITION OF TERMS

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As used in this charter, the following definitions shall apply:

The word state shall mean State of West Virginia.

The word city shall mean City of Moundsville.

The word manager shall mean City Manager.

Where the context so permits, the plural shall include the singular, the singular shall include the plural, and any gender shall include all genders.

We, the undersigned, being a majority of the members of the Charter Board of the City of Moundsville, certify that the foregoing is a true copy of the Charter of the City of Moundsville as finally revised by the Charter Board of the City of Moundsville on March 28, 1985.

*James A. McElroy*  
*Jay Lissett*  
*Heidi L. Blake*  
*William M. Rose*  
*Robert C. Straight, Chairman*  
*David W. Knapp*  
*Montell H. Hill*  
*Oran V. Jack Baker*

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**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA AMENDING AND REENACTING SECTIONS OF THE CHARTER OF THE SAID CITY OF MOUNDSVILLE TO ESTABLISH ELECTION DAYS FOR CITY COUNCIL MEMBERS TO COINCIDE WITH COUNTY AND STATE GENERAL ELECTIONS, AND TO REVISE COUNCIL TERMS AND MAYORAL TERMS IN CONFORMITY THEREWITH**

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WHEREAS, the Charter of the City of Moundsville, West Virginia currently provides for regular city elections to be held on the first Tuesday in June in odd numbered years, and

WHEREAS, The Council of the City of Moundsville has determined that the cost of city elections could be substantially reduced by sharing poll workers, supplies, and so forth with county elections, which would better benefit the citizens of the City of Moundsville,

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA HEREBY ORDAINS:**

The Charter of the City of Moundsville, pertaining to municipal elections is hereby amended and reenacted as follows:

**Section 7. Presiding Officer: Mayor and Vice Mayor**

The Council at the first regular meeting held in January of each year, shall elect one of its members to serve as Mayor for a term of one year commencing immediately upon such election. The Mayor shall preside at meetings of the Council and shall be recognized as head of the City government for all ceremonial and military purposes, but shall have no regular administrative duties. A person who has been elected or who has served as Mayor during all or any part of two consecutive terms shall be ineligible for the office of Mayor during any part of the term immediately following the second of the two consecutive terms. The Council at the first regular meeting held in January of each year, shall elect one of the members to serve as Vice Mayor for a term of one year commencing immediately upon election. The Vice Mayor shall perform all the duties of the Mayor in the event of the absence or disability of the Mayor.

**Section 16. Meetings of Council**

The terms of office of newly elected members of Council shall commence on the first day of January next following their election. The Council shall meet regularly at such times as may be prescribed by ordinance, but not less frequently than twice each month. All meetings of the Council shall be open to the public.

**Section 46. Municipal Elections.**

The regular election of members of the Council shall be held on the Tuesday next after the first Monday in November in even numbered years. The first regular election pursuant to this revised section shall be held on the Tuesday next after the first Monday in November in 2004. At the election so to be held in November, 2004, there shall be elected one Councilman from the first ward and one Councilman from the third ward and two Councilmen at large. At the next regular election the remainder of Council shall be elected. The Councilmen at large to be elected in November, 2004, shall be the two at-large Councilmen whose terms commenced in July, 2001. Councilmen elected at regular elections shall take office on the first day of January following the election. The terms of Councilmen presently in office at the date of the passage of this revised section, shall expire early to accommodate the revised general election day, and shall so expire at the time their successors shall take office as provided herein. Elections to fill vacancies shall be for the unexpired term. Special elections shall be held at such times as may be fixed by the Council, or required by law or this Charter.

**Section 48. Municipal Elections.**

Any qualified elector of the City may be nominated for the Council by petition; provided, however, that no person may be nominated for more than one office at one election.

The term "qualified elector" as used in this Charter shall mean a citizen having the qualifications required by law to vote, and who has been a resident of the City for at least thirty days next preceding the election at which he desires to vote. A petition for this purpose shall be signed by not fewer than 50 qualified electors and for nomination of a candidate at large by 100 qualified electors of the City. No elector shall sign more than one petition for persons nominated by wards, and not more than one petition for each position to be filled for persons to be nominated at large, and should an elector do so, his signature shall be void except as to the petition first filed. The signatures on the nominating petition need not all be subscribed to one paper, but to each separate paper there shall be attached a signed statement of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature or mark of the person whose name it purports to be. With each signature including the signature of the circulator, shall be stated, the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form of the nominating petition shall be stated, the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form nominating petition shall be substantially as follows:

We, the undersigned electors of the ( \_\_\_\_\_ ward in the )\* City of Moundsville hereby nominate \_\_\_\_\_ (at large)\*\* whose residence is \_\_\_\_\_ for the office of member of Council from the \_\_\_\_\_ ward, to be voted for at the election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and we individually certify that we are qualified to vote for a candidate for the Council and that we have not signed any other nominating petition for that office.

Name	Street and Number	Address from which last Registered (if different)	Date of Signing
------	-------------------	---	-----------------

(Spaces for signature and required date)

\*Where appropriate

\*\*Cross out one

#### Statement of Circulator

The undersigned is the circulator of the foregoing paper containing \_\_\_\_\_ signatures. Each signature appended thereto was made in my presence and is the genuine signature of the person whose name it purports to be.

Signature of Circulator \_\_\_\_\_  
Address \_\_\_\_\_

Any signature made earlier than the first day of July next preceding the election shall be void. All nominating papers comprising a petition shall be filed as one instrument with the City Clerk, not later than the 15<sup>th</sup> day of August before the election. The City Clerk shall make a record of the exact time at which each petition is filed. No nominating petition shall be accepted unless accompanied by a signed acceptance of the nomination in substantially the following form:

#### Acceptance of Nomination

I hereby accept the nomination for the Council and agree to serve if elected.

Signature of Candidate \_\_\_\_\_

All petitions so filed shall be submitted by the Clerk to the Council no later than its next regular meeting, for its determination as to their sufficiency. If a petition is found insufficient, the Clerk shall return it immediately to the person who filed it with a statement certifying wherein the petition is found insufficient. Within the regular time for filing petitions such a petition may be amended and filed again as a new petition (in which case the time of the first filing shall be disregarded in determining the validity of signatures thereon) or a different petition may be filed for the same candidate.

(This ordinance shall be effective in accordance with the provisions of West Virginia Code Chapter 8, Article 4, Section 8).

**PASSED:**

  
\_\_\_\_\_  
Sondra Hewitt, City Clerk

January 6, 2004  
**First Reading**

January 20, 2004  
**Second Reading**

**PUBLISH:**

December 18, 2004  
December 26, 2004

6-22-05 3p  
DATE:

## ARTICLE 145 Water Board

- |  |  |
|--|--|
| 145.01 Establishment.                    | 145.09 Board to supervise Waterworks System. |
| 145.02 Qualifications of members.        | 145.10 Powers and duties of Board.           |
| 145.03 Terms.                            | 145.11 Powers of Council.                    |
| 145.04 Officers.                         | 145.12 Accounts; audit.                      |
| 145.05 Compensation.                     | 145.13 Bylaws, rules and regulations.        |
| 145.06 Bond.                             | 145.14 Compliance.                           |
| 145.07 Employees; contracts and bidding. |  |
| 145.08 Finances; timesheets.             |  |

### CROSS REFERENCES

Authority to establish - see W. Va. Code 8-12-5(32)  
Municipal waterworks system - see W. Va. Code Art. 8-19

#### 145.01 ESTABLISHMENT.

There is hereby established the Moundsville Water Board, which shall consist of three voting members appointed by a two-thirds majority vote of Council, and the Moundsville City Manager, and the Moundsville City Mayor, who shall be non-voting members. The City Manager or the City Mayor must attend all regular and special meetings of said Board.  
(Ord. 7-15-97)

#### 145.02 QUALIFICATIONS OF MEMBERS.

Voting members shall:

- (a) Be residents of the City during their tenure;
- (b) Be chosen on their business and professional experience or standing as citizens in the community and not on their political affiliation;
- (c) Not have been convicted of any felony crime, or three or more misdemeanor crimes;
- (d) Not owe any indebtedness to the City;
- (e) Be of good moral and ethical standing in the community;
- (f) Not be appointed solely from one political or fraternal organization, sect, cult or family. (Ord. 7-15-97)

#### 145.03 TERMS.

To ensure continuity, the initial terms for voting members shall be two, three and four years respectively and thereafter, three years.  
(Ord. 7-15-97)

**145.04 OFFICERS.**

From its voting members, the Board shall elect a chairperson, vice-chairperson, and secretary-treasurer. The secretary-treasurer must be one and the same person.  
(Ord. 7-15-97)

**145.05 COMPENSATION.**

Each member of the Water Board shall receive a salary of seventy-five dollars (\$75.00) per meeting attended, not to exceed one hundred fifty dollars (\$150.00) per month, and shall be entitled to reimbursement for reasonable expenses incurred in the performance of the duties of a Board member. (Ord. 4-20-04)

**145.06 BOND.**

Each member shall give bond, with qualified corporate surety, in an amount as Council may require, conditioned for the proper application of all monies received by the Board as such and for the faithful performance of the duties of their position.  
(Ord. 7-15-97)

**145.07 EMPLOYEES; CONTRACTS AND BIDDING.**

The Board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Board may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from the funds provided under the authority of this article, and the Board shall not exercise or carry out any power or authority herein given it so as to hind said Board or the City beyond the extent to which money shall have been, or may be provided under the authority of this article and the provisions of the West Virginia Code.

No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ten thousand dollars (\$10,000) shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest bidder, with power and authority in the Board to reject any and all bids.  
(Ord. 4-21-98)

**145.08 FINANCES; TIMESHEETS.**

(a) All revenue from any source shall be deposited in a bank or banks designated by the Board. Checks and drafts against the account shall be drawn upon the signatures of the City Manager and the treasurer of the Board, and no other signature shall be necessary. Any provision of any other ordinance in conflict with this section is hereby expressly repealed.

(b) In the event of illness or absence of either the City Manager or Board treasurer, the Board chairperson shall co-sign checks issued against the water account.

(c) The Water Superintendent shall present to the Board, once each calendar month, a copy of each Water employee's time sheet for approval by the Board.  
(Ord. 7-15-97)

**145.09 BOARD TO SUPERVISE WATERWORKS SYSTEM.**

The Moundsville Waterworks System in its entirety and any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, usefull, convenient, or incidental in connection with or to the Moundsville water supply system, and the duty to operate, maintain, repair, equip, extend, add to, better and improve said system shall be under the supervision and control of the Moundsville Water Board. (Ord. 7-15-97)

**145.10 POWERS AND DUTIES OF BOARD.**

In addition to the authority and powers enumerated herein, the Moundsville Water Board created by this article shall have and be limited to all powers, authority and duties granted to and imposed upon a board as provided in West Virginia Code Articles 8-16 and 8-19.  
(Ord. 7-15-97)

**145.11 POWERS OF COUNCIL.**

Council may abolish the Board or replace any member for:

- (a) Failure of the Board to control, operate or maintain the Waterworks System in a legal, lawful, efficient and prudent manner;
- (b) Entering into any contracts issuing or selling revenue bonds, selling any land, property or buildings in an illegal or unlawful manner, contrary to the laws of West Virginia;
- (c) Malfeasance, incompetence, impropriety, misconduct, illegal or unlawful actions or unethical behavior.

Board members shall have the right to appeal their dismissal or any charges brought against them to Council and a court of competent jurisdiction.  
(Ord. 7-15-97)

**145.12 ACCOUNTS; AUDIT.**

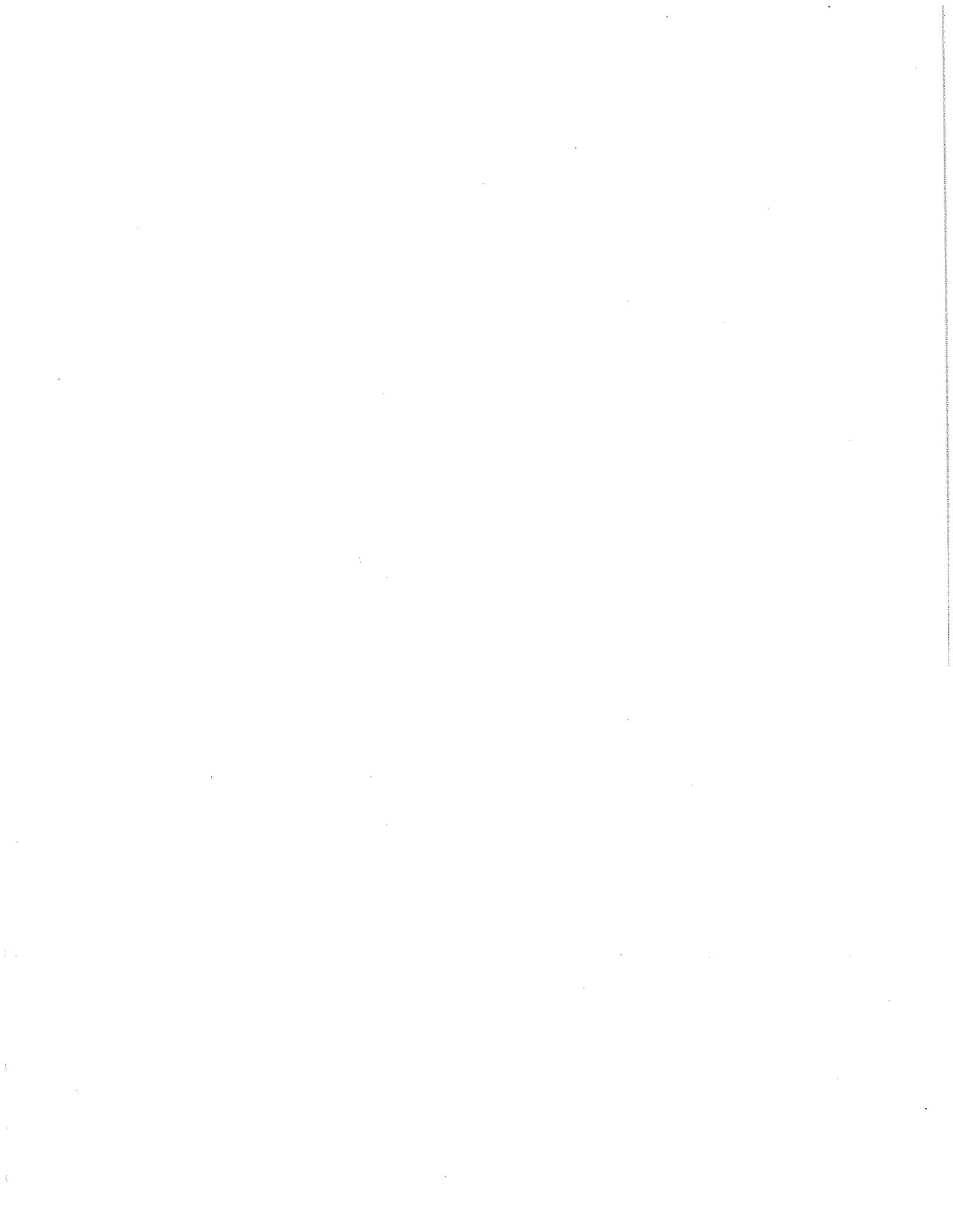
The Board shall set up and maintain a proper system of accounts in accordance with the requirements of the Public Service Commission, showing the amount of revenues received from the Moundsville Waterworks System and the application of the same. At least once a year the Board shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times.  
(Ord. 7-15-97)

**145.13 BYLAWS, RULES AND REGULATIONS.**

The Board shall, within a reasonable time, establish bylaws, rules and regulations for its own government.  
(Ord. 7-15-97)

**145.14 COMPLIANCE.**

The Board shall comply with West Virginia Code Article 6-9A, the Open Governmental Proceedings Act. (Ord. 7-15-97)



**CITY OF MOUNDSVILLE**

**CITY OF MOUNDSVILLE**

**COUNCIL MEMBERS**

**2005-2006**

**FIRST WARD**

✓ - Dick Ward -

**01/01/2005 - 12/30/2008**

**SECOND WARD**

✓ - Shelly Trussell -

**07/01/2003 - 04/19/2005 (resigned)**

✓ - David Haynes -

**05/17/2005 - 12/30/2006**

**THIRD WARD**

✓ - Wayne Lemasters -

**01/01/2005 - 12/30/2008**

**FOURTH WARD**

✓ - David Oiler -

**07/01/2003 - 12/30/2006**

**AT LARGE**

✓ - Dennis Wallace -

**01/01/2005 - 12/30/2008**

✓ - Ralph DiRemigio -

**07/01/2003 - 12/30/2006**

✓ - K. Mark Simms -

**01/01/2005 - 12/30/2008**



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

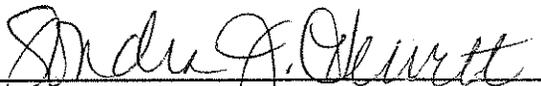
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

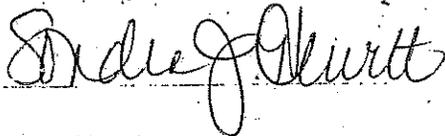
CITY OF MOUNDSVILLE, Towit:

"I, Richard Ward solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of First Ward Councilperson to the best of my  
skill and judgment."

Signed



Attested:



Effective: 01/01/2005



CITY OF  
*M*oundsville

MOUNDVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

**CERTIFICATION**

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of July, 2003.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Shelly Trussell solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Second Ward Councilperson to the best of my  
skill and judgment."

Signed

*Shelly L. Trussell*

Attested:

*Sandra J. Murtt*

Effective: 07/01/2003



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

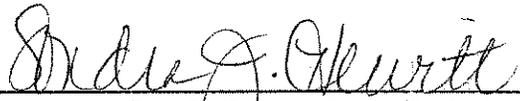
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 17th day of May, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, David Haynes solemnly swear (or affirm)

that I will support the Constitution and will obey the laws of the United States and of the State of West Virginia, that I will, in all respects, observe the provisions of the Charter and ordinances of the City of Moundsville and will faithfully discharge the duties of the office of City Council Member, Second Ward to the best of my Unexpired Term skill and judgment."

Signed

*David S. Haynes*

Attested:

*John J. Murre*

Effective:

*5/17/05*



CITY OF  
*M*oundsville

MOUNDVILLE, WEST VIRGINIA

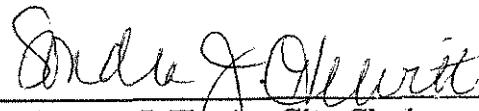
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Wayne Lemasters solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Third Ward Councilperson to the best of my  
skill and judgment."

Signed Wayne A. Lemasters

Attested: Eddie J. Kurtz

Effective: 01/01/2005



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of July, 2003.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, David Oiler solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Fourth Ward Councilperson to the best of my  
skill and judgment."

Signed

*David L. Oiler*

Attested:

*Endre J. Skurtz*

Effective: July 1, 2003



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December 31, 2005.

(SEAL)

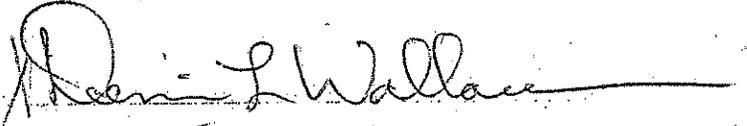
  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

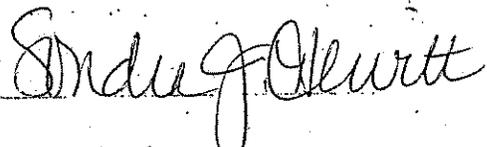
CITY OF MOUNDSVILLE, Towit:

"I, Dennis Wallace solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Councilperson at Large to the best of my  
skill and judgment."

Signed



Attested:



Effective: 01/01/2005



CITY OF  
*M*oundsville

MOUNDVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2003.

Given under my hand this 6th day of December, 2005.

(SEAL)

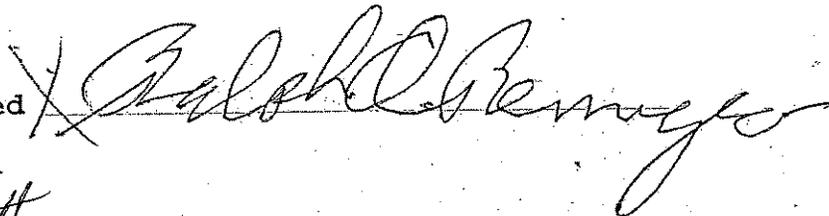
  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

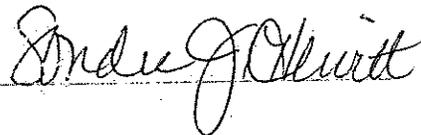
CITY OF MOUNDSVILLE, Towit:

"I, Ralph DiRemigio solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Councilperson at Large to the best of my  
skill and judgment."

Signed



Attested:



Effective: 01/01/2003



**CITY OF**  
*Moundsville*

MOUNDSVILLE, WEST VIRGINIA

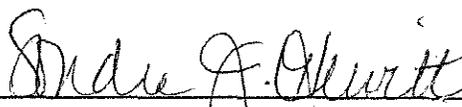
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

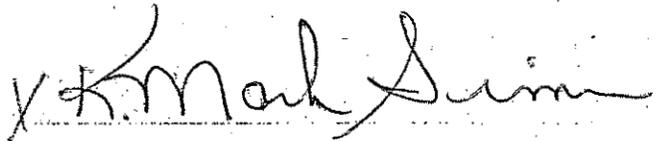
  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

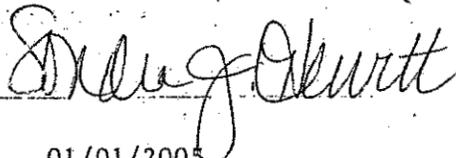
CITY OF MOUNDSVILLE, Towit:

"I, K Mark Simms solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Councilperson at Large to the best of my  
skill and judgment."

Signed



Attested:



Effective: 01/01/2005



MOUNDSVILLE, WEST VIRGINIA

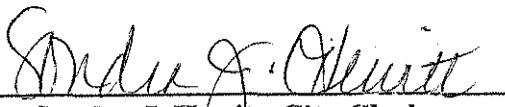
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

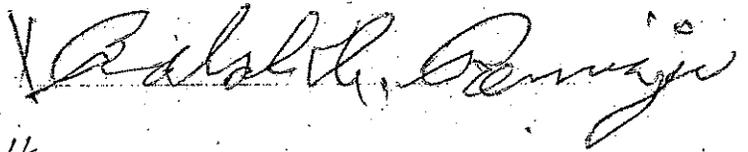
  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

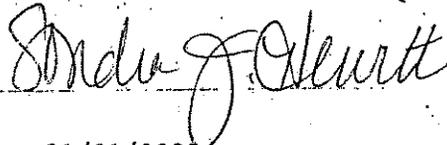
CITY OF MOUNDSVILLE, Towit:

"I, Ralph DiRemigio solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of MAYOR to the best of my  
skill and judgment."

Signed



Attested:



Effective: 01/01/2005



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

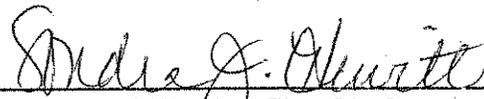
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of January, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

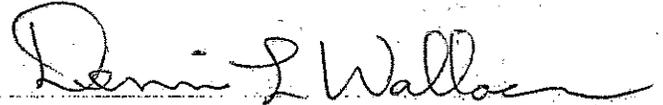
  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

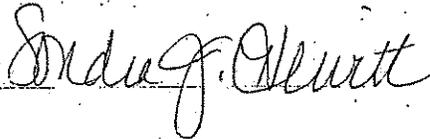
CITY OF MOUNDSVILLE, Towit:

"I, Dennis Wallace solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of VICE MAYOR to the best of my  
skill and judgment."

Signed

X 

Attested:



Effective: 01/01/2005

CITY OF



MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 845-3394  
POLICE 845-1611  
CITY MANAGER 845-6300  
FIRE 845-2050  
FAX 845-7130

**CERTIFICATION**

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 3rd day of October, 2004 .

Given under my hand this 3rd day of October, 2004 . .

(SEAL)

  
Sondra J. Hewitt, City Clerk

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Allen R. Hendershot solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of City Manager to the best of my  
skill and judgment."

Signed



Attested:



Effective:

08/22/2002

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Sondra Hewitt solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of West Virginia, that I will, in all respects, observe the provisions of the Charter and ordinances of the City of Moundsville and will faithfully discharge the duties of the office of City Clerk to the best of my skill and judgment."

Signed Sondra J. Hewitt

Attested: Judy (L. L.)

Effective: 03/15/94

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Thomas White solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of City Attorney to the best of my  
skill and judgment."

Signed

Thomas White

Attested:

Sandra J. Newitt

Effective:

02/01/98

**MOUNDSVILLE WATER BOARD MEMBERS**

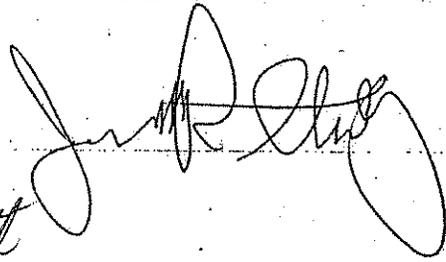
<b>MEMBER</b>	<b>APPT. DATE</b>	<b>TERM EXPIRES</b>
<b>JAMES STULTZ</b>	<b>07/15/2001</b>	<b>07/15/2007</b>
<b>DAVID HAYNES</b>	<b>01/20/2004</b>	<b>07/15/2008</b>
<b>THOMAS FERRIS</b>	<b>07/15/1997</b>	<b>07/15/2006</b>

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

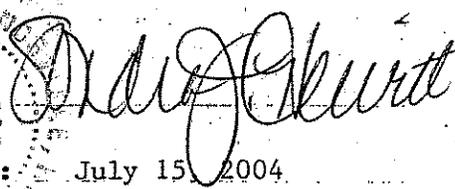
CITY OF MOUNDSVILLE, Towit:

"I, Jim Stultz \_\_\_\_\_ solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of West Virginia, that I will, in all respects, observe the provisions of the Charter and ordinances of the City of Moundsville and will faithfully discharge the duties of the office of Moundsville Water Board \_\_\_\_\_ to the best of my skill and judgment."

Signed



Attested:



Effective: July 15, 2004.





CITY OF  
**M**oundsville

BOOK 002 PAGE 529

MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

**CERTIFICATION**

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 15th day of July, 2004.

Given under my hand this 15th day of November, 2004.

(SEAL)

*Sondra J. Hewitt*  
Sondra J. Hewitt, City Clerk



STATE OF WEST VIRGINIA, MARSHALL COUNTY, SCT.:

I, **JAN PEST**, Clerk of the County Commission of said County, do hereby certify that the annexed writing, bearing date on the 15th day of July, 2004, was presented for and by me, admitted to record in my office upon the above certificate as to the parties therein named this 17th day of November, 2005 at 3:00 o'clock P.M.

TESTE: *Jan Pest* Clerk.

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, DAVID S HAYNES solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of MOUNDSVILLE WATER BOARD MEMBER to the best of my  
skill and judgment."

Signed

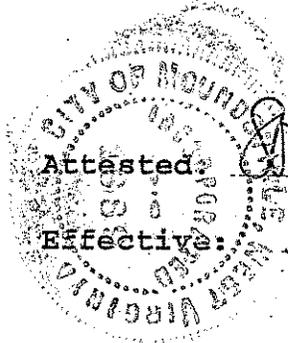
*David S Haynes*

Attested:

*David G. Hunt*

Effective:

July 15, 2005.





CITY OF

Moundsville

MOUNDVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 15th day of July, 2005 .

Given under my hand this 15th day of November, 2005 .

(SEAL)

*Sondra J. Hewitt*  
Sondra J. Hewitt, City Clerk



STATE OF WEST VIRGINIA, MARSHALL COUNTY, SCT.:

I, JAN PEST, Clerk of the County Commission of said County, do hereby certify that the annexed writing, bearing date on the 15th day of July, 2005, was presented for and by me, admitted to record in my office upon the above certificate as to the parties therein named this 17th day of November 2005 at 3:06 o'clock P.M.

TESTE: *Jan Pest* Clerk.

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL,

CITY OF MOUNDSVILLE, Towit:

"I, Tom Ferris \_\_\_\_\_ solemnly swear (or affirm)  
that I will support the Constitution and will obey the laws of the  
United States and of the State of West Virginia, that I will, in  
all respects, observe the provisions of the Charter and ordinances  
of the City of Moundsville and will faithfully discharge the duties  
of the office of Moundsville Water Board Member to the best of my  
skill and judgment."

Signed

*Thomas A Ferris*

Attested:

*Ende J. Pruitt*

Effective: July 15, 2003





CITY OF *M*oundsville

MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 15th day of July, 2003.

Given under my hand this 15th day of November, 2005.

(SEAL)

*Sondra J. Hewitt*  
Sondra J. Hewitt, City Clerk



STATE OF WEST VIRGINIA, MARSHALL COUNTY, SCT.:

I, JAN PEST, Clerk of the County Commission of said County, do hereby certify that the annexed writing, bearing date on the 15th day of July, 2003, was presented for and by me admitted to record in my office upon the above certificate as to the parties therein named this 17th day of November, 2005, at 3:06 o'clock P.M.

TESTE: *Jan Pest* Clerk.



**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 31st day of October, 2005.

Case No. 03-1974-W-CN-PW  
City of Moundsville,  
a municipal corporation.

Application for a certificate of convenience and necessity to construct a water treatment plant.

Case No. 05-0641-W-MA  
City of Moundsville,  
a municipal corporation.

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

**COMMISSION ORDER**

On August 17, 2004 the Commission granted the City of Moundsville (Utility) a certificate of convenience and necessity to construct a water treatment plant. (Case No. 03-1974-W-CN-PW.) The Commission found that the existing water was of poor quality with excessive manganese and hardness. The Commission approved an innovative plant using ozonation, nanofiltration, and traveling bridge filters.

The bids for the treatment plant were several million dollars more than anticipated. The bids substantially exceeded the amount originally financed and approved by the Commission.

On April 19, 2005 the Utility adopted a new rate ordinance increasing its water rates in order to support the greater expense. (Case No. 05-0641-W-MA.)

On May 6, 2005 the Commission received a protest to the rate increase from the Marshall County Public Service District No. 4 (PSD 4). PSD 4 alleged that the water increase was discriminatory.

On May 10, 2005 the Commission asserted its jurisdiction over the municipal ordinance pursuant to *West Virginia Code* § 24-2-4b. The Commission suspended the Utility's rate increase and referred the matter to the Division of Administrative Law Judges (ALJ). The Commission required Staff to issue its report on or before July 19, 2005. The Commission required a Recommended Decision on or before September 2, 2005.

On May 19, 2005 PSD 4 moved to reopen the certificate proceeding and moved to intervene in that proceeding.

On May 25, 2005 Marshall County Public Service District No. 3 (PSD 3) filed an objection to the rate increase and also alleged that it was discriminatory.

On May 27, 2005 Staff moved to consolidate the municipal appeal with the certificate proceeding. Staff opined that, with the additional costs, it may make sense for the Utility to purchase its water from Wheeling. Staff further moved to add Wheeling as a party to the proceeding.

On June 1, 2005 the Commission referred the reopened certificate proceeding to the ALJ Division with a decision due date of December 16, 2005.

On June 6, 2005 the Utility filed motions to toll the statutory period in 05-0641-W-MA by thirty-one (31) days, to consolidate the two proceedings, and to shorten the decision due date in 03-1974-W-CN-PW.

On June 13, 2005 Wheeling objected to being made a party. Wheeling indicated that it would meet with Staff and the other parties on an informal basis, but that full party status would unnecessarily cost Wheeling a significant amount of money.

By Procedural Order issued June 13, 2005, Staff's motion to consolidate the municipal appeal and the certificate case was denied, due to the abbreviated nature of municipal appeals. Staff's motion to add Wheeling as a party was denied, due to concern that full party status would unnecessarily cost Wheeling a significant amount of money and upon the assumption that Wheeling would cooperate with Staff. The matter was also set for hearing on August 2, 2005.

On June 14, 2005 the Utility filed an "Application for Approval of Project Changes." Therein, the Utility noted that the project was originally expected to cost \$13,569,000.00. The lowest responsible construction bid totaled \$16,807,666.00. The Utility further noted that in order to minimize the impact of the high bids, the Moundsville City Council enacted a two-step rate increase. In order to eliminate capitalized interest on the project, the first

step-increase would cover current operating costs plus the debt service associated with the project. The second step-increase would go into effect upon completion of construction (expected in December of 2007). Revenues from the second step are designed to be sufficient to pay debt service associated with the project plus increased operations and maintenance expenses arising from operation of the new water treatment plant.

By Commission Order issued June 30, 2005 the Commission granted the Utility's motions and consolidated the two proceedings, tolled the statutory period in 05-0641-W-MA for thirty-one (31) days (until November 2, 2005), granted an extension of the decision due date in 05-0641-W-MA by the same amount, and shortened the decision due date in 03-1974-W-CN-PW to October 3, 2005.

By Procedural Order issued July 22, 2005 the hearing set for August 2, 2005, was cancelled. A new hearing was scheduled for August 30, 2005. Expedited transcripts were required and initial briefs were required to be filed on or before September 13, 2005, with reply briefs to be filed on or before September 20, 2005.

The hearing was held as scheduled. James V. Kelsh, Esquire, and John L. Allen, Esquire, appeared on behalf of the Utility. Mark E. Kauffelt, Esquire, appeared on behalf of PSD 4. David White, Esquire, appeared on behalf of PSD 3 and PSD 4. Cassius H. Toon, Esquire, appeared on behalf of Commission Staff.

On August 31, 2005 the Commission received a protest from the Utility consisting of a petition containing signatures representing protests to the alternative plan.

Staff filed a further Staff Memorandum on September 7, 2005. PSD 3, PSD 4, and the Utility filed briefs on September 13, 2005. Reply briefs were filed on September 20, 2005.

On September 29, 2005 the ALJ issued a Recommended Decision denying the certificate and denying the associated rate increase passed by the City of Moundsville. The ALJ set forth the following Findings of Fact, Conclusions of Law, and Ordering paragraphs:

#### FINDINGS OF FACT

1. The Infrastructure Council has not yet approved the funding for this project and is contemplating referring the project to its consolidation committee. (Tr. 144, 145; Utility Ex. 10).

2. Wheeling stands ready and willing to provide the Utility with all of its water needs and is even willing to consider various alternatives on how to get the transmission line built. (Tr. 162, 171).

3. Wheeling has more than enough excess capacity to serve the Utility and can do so without additional staff or operation time. (Tr. 162, 163).

4. Wheeling's water has never been out of compliance with water quality standards. (Tr. 167).

5. Three municipalities operate water utilities between Wheeling and Moundsville, all of which would benefit from a transmission line between the two cities. (Tr. 119, 175, 177).

6. There are industrial sites between Wheeling and Moundsville that could benefit from having a large supply of potable water easily accessible. (Tr. 200).

7. If Wheeling provided the Utility with water, Wheeling's sales would increase by 20%, without substantially increasing its O&M expenses, which would benefit the Wheeling system both in terms of a downward pressure on rates and making it easier to improve its system with lower rate increases. (Tr. 162, 179, 180, 342, 343).

8. Building a transmission line to Wheeling, even including new storage, would be less costly than building the proposed plant. (Tr. Tr. 191, 258, 265, 266, 269; PSD 4 Ex. Nos. 6, 7).

9. The transmission line could be built in a reasonable time frame using conventional methods and would be reliable and durable. (Tr. 91, 92, 93, 191, 192, 193, 198, 199, 207, 340, 347).

10. The transmission line option would provide the Utility with 3,000,000 gallons of storage, while the treatment plant option will only provide 500,000 gallons of storage. (Tr. pp. 84, 118).

## CONCLUSIONS OF LAW

1. Public convenience does not require the treatment plant as proposed by the Utility given that the public interest would be more clearly advanced if the Utility purchased its water from Wheeling.

2. The rates adopted by the Utility to support the project should be rejected given that the project should not be granted a certificate.

## ORDER

IT IS, THEREFORE, ORDERED that the City of Moundsville's application filed on November 21, 2003, and reopened on May 19, 2005, for a certificate of convenience and necessity to build a treatment plant be, and hereby is, denied.

IT IS FURTHER ORDERED that the City of Moundsville's rate ordinance adopted on April 19, 2005, to support the proposed project be, and hereby is, rejected.

The Utility filed exceptions on October 7, 2005. Therein, the Utility excepted to Findings of Fact Nos. 1, 5, 6, 7, 8, 9, and 10; Conclusions of Law Nos. 1 and 2; and argued that the Recommended Decision ignored and failed to address: (a) the briefs of the parties; (b) the great value of the Moundsville plant in producing high quality water at rates below the statewide average; (c) the advantages of Moundsville's continued use of a ground water source of supply; (d) the comparative advantage of the Moundsville plant in addressing increasingly stringent water treatment and quality standards; (e) the greater reliability of the Moundsville treatment plant; (f) the long-term water treatment cost stability of the Moundsville water treatment plant; (g) Moundsville's sunk costs on the water treatment plant project; (h) the preference of the elected officials of the City of Moundsville and the Marshall County Commission for the Moundsville plant; (i) the uncertain costs of upgrades to the Wheeling treatment plant and the consequential uncertainty as to Wheeling's long-term rates; (j) the risk of errant estimates of the cost of the Wheeling transmission line, as contrasted with price certainty for the Moundsville water treatment plant; (k) the risk of price escalation with the Wheeling transmission line and treatment plant improvements, as contrasted with price certainty associated with the Moundsville water treatment plant; and (l) the difficulty of constructing a transmission line involving five cities, two industrial concerns, and one or more railroads.

The Marshall County Commission filed a letter on October 14, 2005 in opposition to the transmission of water from Wheeling to Moundsville.

On October 17, 2005 Wheeling filed a response to the Utility's exceptions, noting, among other things, the following: (1) that a water line from Wheeling to Moundsville would allow rates in Wheeling to decrease; (2) the engineering and legal considerations would not be difficult to overcome; (3) the Utility overstated the problems with Wheeling's water quality; (4) Wheeling could provide a reliable source of supply; and (5) Wheeling is willing to cooperate in developing a regional solution.

Also on October 17, 2005 the PSD 3 and PSD 4 filed a response to the Utility's exceptions. Among other things, the Districts noted the following: (1) the Districts support the construction of a water line from Wheeling to the Utility; (2) Wheeling has adequate capacity to provide service to the Utility; (3) Wheeling's water supply is of acceptable quality and there is sufficient supply; (4) a tank is not necessary when building the line from Wheeling to the Utility and it is feasible to build such a line; (5) neither the Utility nor Staff adequately explained why a tank was necessary for the water line but not in the instance where the Utility built its own plant; (6) the possibility of a Wheeling rate increase is pure speculation; (7) Staff's determination in favoring the Moundsville plant is flawed due to assumptions made by Staff in its calculations; (8) building a line would save hundreds of thousands of dollars per year for the customers of the Utility; and (9) the two-tiered rates violate Commission policy. Rates associated with a project should not go into effect until a project is completed.

Staff filed Exceptions on October 17, 2005. In its Exceptions, Staff argued, among other things, the following: (1) the Wheeling water line would be difficult to construct for a number of reasons; (2) the funding of the plant is not at issue in this case as additional funding is available; (3) Wheeling will need improvements to its system in order to stay in compliance with new water quality regulations; (4) The connection of other utilities/industries to a Wheeling water line is speculation; (5) a decrease in Wheeling's rates is speculative; (6) the ALJ does not fully understand the present worth cost analysis performed by Staff in its two-tiered rate increase; (7) the ALJ misunderstood the issue of the storage necessary under the two scenarios. Staff also raised some issues regarding calculation of the tariff rates.

On October 18, 2005 the Utility filed a motion to strike Wheeling's response arguing (1) Wheeling is not a party to this matter and (2) Wheeling relies on information lying outside of the record of this case.

On October 19, 2005 the PSD 3 and PSD 4 filed a response to the Utility's motion to strike. The Districts argued that Wheeling should be permitted to defend itself against the statements made by the Utility and that nothing in the record supports disparaging the quality of Wheeling's treated water.

On October 19, 2005 petitions were filed in support of the plant and in opposition to the Wheeling water line scenario.

On October 19, 2005 the PSD 4 filed a response to Staff's Exceptions noting (1) the Wheeling water line can be feasibly built and (2) approving a plant for the Utility will obstruct regionalization of water service in the Northern Panhandle.

### DISCUSSION

The Commission has reviewed the Recommended Decision, exceptions, responses to exceptions, and additional filings from all parties, and from Wheeling, in this matter. The parties have raised and argued the question of whether the Moundsville plant should be abandoned in favor of extension of a water line from the City of Wheeling.

This particular project was approved in the Commission's August 17, 2004 Order. That Order directed the Utility to return to the Commission for approval should the engineering plans, the scope of the project, or the financing change.

The questions before the Commission are whether the project should still be approved given its increase in cost (Case No. 03-1974-W-CN-PW) and whether the rates proposed in Case No. 05-0641-W-MA are discriminatory.

The benefits to be derived from the project by the Utility's current and potential customers have not changed appreciably since the project was approved by the Commission's August 17, 2004 Order. The pertinent change is that the project is expected to cost over \$3.2 million more than originally anticipated.

Several parties raised financing, as distinguished from costs, as an issue. Both the Utility and Staff argued that funding will be made available by the West Virginia Infrastructure and Jobs Development Council should the Commission ultimately approve the Utility's request for proposed changes to the project. Approval of this project will remain contingent upon the Utility obtaining the needed increase in financing. Treated as a contingency, financing becomes a non-issue.

The Wheeling water line is not, at this time, a viable alternative to the Utility's project. While the purported benefits of the Wheeling line (lower cost, regional appeal, a source of supply for resale customers, increased sales by Wheeling, lower rates for Wheeling, ease of construction) make for an inviting comparison, the reality is that such benefits are based on rough estimates and good-faith conjecture in regards to a water transmission line that is barely past the conceptual stages of development. Additionally, the chief proponent of the water line chose to not appear as a party in this matter. The Commission will not deny the Utility's certificate based on such conjecture.

PSD 3 and PSD 4 objected to the two-tier rates proposed by the Moundsville City Council. Specifically, the Districts claimed discrimination because the first stage of the rates are charged to the resale customers prior to completion of the plant. As such, the districts argue that the money collected in advance of project completion could be used for improvements to the water system within the City of Moundsville without providing any benefits to resale customers.

The "Staff Report" filed August 22, 2005 noted the following:

Based upon going level operations it is apparent that current rates are sufficient to cover the current costs of the Board. However, an increase is necessary to handle the interest costs associated with the new long-term indebtedness so that the respective interest amounts would not have to be capitalized. Thus, due to a significant increase in interest costs with the new treatment plant a large increase in rates is required. Based upon information provided by the Analyst in the Certificate case, if the capitalized interest is rolled into the long-term debt and amortized over 30 and 38 year periods respectively the payback will cost approximately \$2,315,688 more. Thus, the user rates including the resale rate would have to be increased. Therefore, Staff has provided for a two step increase in rates. Staff Recommended #1 rates will address going level increases as well as increases associated with the new long-term debt interest costs, while Staff Recommended #2 rates will address all increases associated with the new treatment facility including O&M, Taxes Other than Income Taxes, Debt Service, reserves, etc. [Staff Report at pp. 3-4.]

Staff updated its position with its "Further Final Joint Staff Memorandum" filed September 7, 2005. Therein, Staff stated:

After the Staff Report was submitted, information was filed by [the Water Development Authority] WDA which changed the annual debt service

as projected by Staff in Case No. 03-1974-W-CN (Reopened). Based upon the information provided by WDA the City of Moundsville (City) will pay interest only for the first two years in the respective amounts of \$472,632.50 and \$584,700 for a total of \$1,057,332.50. Thus, Staff adjusted the interest expense in the Staff Recommended #1 rates (Tier 1) to an average expense of \$528,666 ( $\$1,057,332.50 / 2$  years) annually over this two year period. Furthermore, WDA also advised Staff that it would require 115% coverage on the Staff Recommended #1 rates. Therefore, Staff has attached revised pages to its Staff Report to incorporate the changes for a reduction in annual interest expense and for adjustments required to have 115% coverage as required by WDA.

It should be noted that Staff had previously amortized \$45,709 annually to offset the respective surplus amounts recommended in this case. However, due to the coverage requirements Staff cannot reduce the surplus amount by this amount, but has instead reclassified this amount as a Cash Reserve Transfer (Statement A, Schedule 6 & Statement H) to be considered as other income. Therefore, the City should be ordered to amortize \$45,709 annually from their unencumbered funds for at least the first two years in order to meet the 115% coverage required.

These changes result in a decrease in rates for all classes of customers in the Staff Recommended #1 rates (Tier #1) from that originally recommended by Staff. These changes are reflected in the rate comparison, included as Attachment 1 Revised, and in the Staff Recommended #1 rates and charges contained on Statement D, Schedule 4.

#### Post Construction Rates (Staff Recommended #2)

Based upon the information provided by WDA, the City will pay \$726,905 annually in principal and interest over the remaining 28 years of the loan. Therefore, the annual payment has increased from the Staff projected \$701,114 annually to \$726,905 annually for a difference of \$25,791. This increase in debt service would also require additional increases in funds required for the respective Primary and Renewal and Replacement reserves. However, as noted in Staff's testimony at the hearing, the City has two current loans (Total Debt Service of \$29,766 annually) for a backhoe and dump truck which mature in late 2007. Therefore, Staff has removed the debt service associated with these two loans since they will be matured at the time of the Staff Recommended #2 rates (Tier #2) becoming effective.

It should be noted that Staff had previously amortized \$45,709 annually to offset the surplus amounts recommended in this case. Staff has reclassified this amount as a Cash Reserve Transfer to be considered as other income.

Thus, the adjustments made to increase annual WDA debt service and adjustments made to remove matured loans for the backhoe and dump truck result in no change in Staff Recommended #2 rates, since the totals of the two are approximately the same.

Therefore, Staff has revised its recommendation to incorporate changes in WDA debt service and coverage requirements and to adjust for the maturing of two loans in 2007. The end result of the revisions will produce the rates and charges contained on Staff's Revised Statement D, Schedule 4. Staff Recommended #1 revised rates and charges provide for a minimum bill based on 2,000 gallons of \$8.42 and a bill based on 4,500 gallons of \$16.45. The resale rate will be \$2.28 per M gallon. As previously noted, there will be no change in the Staff Recommended #2 (Tier #2) rates previously recommended by Staff. The revised cash flow (Statement H) provides for a surplus of \$83,303 and coverage of 115.09% at Staff Recommended #1 and a surplus of \$87,656 and coverage of 124.63% at Staff Recommended #2. Staff is filing revised Pages 1-8, 13, 14, 20-23, 42, 55-59, 61-65, and Attachment 1 and 2 Revised.

In its "Reply Brief of the City of Moundsville," filed September 20, 2005 the Utility requested the Commission adopt the Utility's Tier I rates and the Staff's Tier II rates, noting that Staff's Tier 1 rates were insufficient.

Staff's October 17, 2005 "Exceptions to Recommended Decision" addressed the sufficiency of the Tier I rates. Staff stated:

The City, in its September 13, 2005, Initial Brief and its September 26, 2005, Rule 42 Exhibit, argue Staff's Step 1 rates and charges are understated and propose higher Step 1 rates and charges. The reason being Staff's Step 1 rates do not cover the proposed annual capital interest expense nor do they produce the required debt coverage without the transfer of \$45,709 in unencumbered funds to the general revenue fund. Staff has not been provided a revised amortization schedule indicating an increase in the Water Development Authority (WDA) interest expense incurred during construction then the amount funded by Staff in its Step 1 rates. Further, Staff inquired about this issue of meeting the required debt coverage with the WDA, and was to receive

a follow-up response to this inquiry. However, no response or indication from the WDA was provided addressing this issue. It was not until the City's Initial Brief filing that it indicated that it did not meet the WDA requirement.

Staff would argue that the unencumbered funds were generated through current rates and utilizing these funds as a source of revenue to secure and guarantee sufficient funds to cover the annual interest expense during construction and meet the required debt coverage, accomplishes these requirements. The City argues the unencumbered funds are not a component of the annual net revenues and as such are not received on an annual basis nor can they be expected to be received on a recurring basis. Further, the City notes that possible construction delays could occur which would impact the City's ability to remain current with the lenders since Staff's Step 1 rates would be insufficient. While Staff is proposing the City utilize these unencumbered funds as an other revenue source to meet the debt coverage requirement, it is likely these funds will never actually be expended. This is due to the fact that Staff's Step 1 rates, as proposed, generate a cash flow surplus of approximately \$83,303 which exceeds the \$45,709 annual amount of unencumbered funds to be utilized. Again, Staff is reaffirming its recommendation for approval of its Step 1 and 2 rate increases. Staff would note, if documentation is provided that the project funding agencies will deny closing on the financing due [to] rate adequacy issues, Staff would recommend, in the alternative, that the City's Step 1 rates be approved. [Staff Exceptions at pp. 14-16.]

No further documentation was received. The Commission agrees with the Staff's treatment of this issue and shall adopt the Staff-recommended rates herein. Additionally, the Commission shall order the Utility to amortize \$45,709 annually from their unencumbered funds until such time as it has met the WDA required 115% debt coverage.

There is no discrimination in the implementation of the tiered rates. All customers will help to pay for the project in advance of the project's completion. Additionally, all customers will benefit from those early payments by paying lower rates than would be necessary were the Tier I rates not used.

The Commission understands that this decision is a departure from the Commission's usual advocacy of the "used and useful" theory of only charging rates associated with a project after the project is in service. However, the Commission notes that departure from the theory in this instance will result in a savings to all customers of the Utility.

The Commission shall not adopt the ALJ's Recommended Decision; shall approve the Utility's proposed changes to the project; shall approve the additional funding for the project contingent on the Utility obtaining such funding; and shall approve Staff's tiered rates for use by the Utility.

### FINDINGS OF FACT

1. On August 17, 2004 the Commission granted the Utility a certificate of convenience and necessity to construct a water treatment plant. (See, Case No. 03-1974-W-CN-PW.)
2. The bids for the treatment plant were several million dollars more than anticipated. The bids substantially exceeded the amount originally financed and approved by the Commission.
3. On April 19, 2005 the Utility adopted a new rate ordinance increasing its water rates in order to support the greater expense. (See, Case No. 05-0641-W-MA.)
4. On May 6, 2005 the Commission received a protest to the rate increase from the PSD 4. PSD 4 alleged that the water increase was discriminatory.
5. On May 10, 2005 the Commission asserted its jurisdiction over the municipal ordinance pursuant to *West Virginia Code* § 24-2-4b. The Commission suspended the Utility's rate increase.
6. On May 19, 2005 PSD 4 moved to reopen the certificate proceeding and moved to intervene in that proceeding.
7. On May 25, 2005 PSD 3 filed an objection to the rate increase and also alleged that it was discriminatory.
8. On June 14, 2005 the Utility filed an "Application for Approval of Project Changes." Therein, the Utility noted that the project was originally expected to cost \$13,569,000.00. The lowest responsible construction bid totaled \$16,807,666.00. The Utility further noted that in order to minimize the impact of the high bids, the Moundsville City Council enacted a two-step rate increase.
9. The hearing was held on August 30, 2005 in the two cases, as scheduled.

10. On September 29, 2005 the ALJ issued a Recommended Decision denying the certificate and denying the associated rate increase passed by the City of Moundsville.

11. The Utility filed exceptions on October 7, 2005. Therein, the Utility excepted to Findings of Fact Nos. 1, 5, 6, 7, 8, 9, and 10; Conclusions of Law Nos. 1 and 2; and argued that the Recommended Decision ignored and failed to address certain other issues. Staff also filed exceptions. The parties filed various replies to the exceptions. (See the procedural section of this order for more detail on the filings.)

12. Wheeling, PSD 3 and PSD 4 recommended that a water line extension from Wheeling to the Utility would be more cost-effective and comprised a better regional solution to the Utility's water needs than did the proposed new plant.

13. The benefits to be derived from the project by the Utility's current and potential customers have not changed appreciably since the project was approved by the Commission's August 17, 2004 Order.

14. Both the Utility and Staff argued that funding will be made available by the West Virginia Infrastructure and Jobs Development Council should the Commission ultimately approve the Utility's request for proposed changes to the project.

15. The chief proponent of the water line, Wheeling, chose to not appear as a party in this matter.

16. PSD 3 and PSD 4 objected to the two-tier rates proposed by the Moundsville City Council. Specifically, the districts claimed discrimination because the first stage of the rates are charged to the resale customers prior to completion of the plant. (See the petitions filed by the districts in opposition to the Utility's municipal ordinance.)

17. Based upon going level operations it is apparent that current rates are sufficient to cover the current costs of the Board. ("Staff Report," August 22, 2005.)

18. An increase is necessary to handle the interest costs associated with the new long-term indebtedness so that the respective interest amounts would not have to be capitalized. ("Staff Report," August 22, 2005.)

19. If the capitalized interest is rolled into the long-term debt and amortized over 30 and 38 year periods respectively the payback will cost approximately \$2,315,688 more. Thus, the user rates including the resale rate would have to be increased. ("Staff Report," August 22, 2005.)

20. Staff Recommended #1 revised rates and charges provide for a minimum bill based on 2,000 gallons of \$8.42 and a bill based on 4,500 gallons of \$16.45. The resale rate will be \$2.28 per 1000 gallon. The revised cash flow provides for a surplus of \$83,303 and coverage of 115.09% at Staff Recommended #1 and a surplus of \$87,656 and coverage of 124.63% at Staff Recommended #2. ("Staff Report," August 22, 2005.)

### CONCLUSIONS OF LAW

1. Approval of this project will remain contingent upon the Utility obtaining the needed increase in financing from the West Virginia Infrastructure and Jobs Development Council.

2. The Wheeling water line is not, at this time, a viable alternative to the Utility's project. While the purported benefits of the Wheeling line (lower cost, regional appeal, a source of supply for resale customers, increased sales by Wheeling, lower rates for Wheeling, ease of construction) make for an inviting comparison, the reality is that such benefits are based on rough estimates and good-faith conjecture in regards to a water transmission line that is barely past the conceptual stages of development. The Commission will not deny the Utility's certificate based on such conjecture.

3. The Commission shall adopt the Staff-proposed rates for use by the Utility. Additionally, the Commission shall order the Utility to amortize \$45,709 annually from their unencumbered funds until such time as it has met the required 115% WDA debt coverage.

4. There is no discrimination in the implementation of the tiered rates. All customers will help to pay for the project in advance of the project's completion. Additionally, all customers will benefit from those early payments by paying lower rates than would be necessary were the Tier I rates not used.

5. The Commission understands that this decision is a departure from the Commission's usual advocacy of the "used and useful" theory of only charging rates associated with a project after the project is in service. However, the Commission notes that departure from the theory in this instance will result in a savings to all customers of the Utility.

6. The Commission shall not adopt the ALJ's Recommended Decision; shall approve the Utility's proposed changes to the project; shall approve the additional funding for the project contingent on the Utility obtaining such funding; and shall approve Staff's tiered rates for use by the Utility.

## ORDER

IT IS THEREFORE ORDERED that the proposed changes to the project requested by the Utility are hereby approved contingent upon the Utility obtaining the additional funding necessary.

IT IS FURTHER ORDERED that, in addition to the funding previously approved in this case, the Utility's requested funding in the form of either: (1) a \$4,900,000 USDA RUS loan, payable over 38 years at 4.25% per annum, coupled with a \$9,107,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum, or (2) a \$14,007,000 WDA loan payable over 30 years at a market rate, not to exceed 6% per annum; is hereby approved contingent upon the Utility's ability to obtain such funding.

IT IS FURTHER ORDERED that the rates attached hereto are approved for use by the Utility. Tariff I shall be effective for all service rendered on and after the end of the suspension period until such time as Tariff II becomes effective. Tariff II shall be effective for all service rendered by the Utility upon completion of the construction associated with its project.

IT IS FURTHER ORDERED that the Utility submit its engineering report indicating completion of the project within ten days of its receipt.

IT IS FURTHER ORDERED that the Utility submit a copy of its Tariff I to the Commission's Tariff Office within thirty days of the end of the suspension period.

IT IS FURTHER ORDERED that the Utility submit a copy of its Tariff II to the Commission's Tariff Office within thirty days of completion of construction of the project approved by this Order.

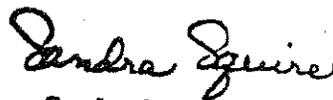
IT IS FURTHER ORDERED that the Utility shall amortize \$45,709 annually from their unencumbered funds until such time as it has met the required 115% WDA debt coverage.

IT IS FURTHER ORDERED that if there are changes in the scope, financing or cost of the project, the Utility seek Commission approval of such changes prior to commencing or continuing construction.

IT IS FURTHER ORDERED that upon entry of this order these cases shall be removed from the Commission's docket of open cases.

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

A True Copy, Teste:



Sandra Squire  
Executive Secretary

JJW/klm  
031974cd.wpd

**CITY OF MOUNDSVILLE - Water Operations  
CASE NUMBER 05-0641-W-MA**

**APPROVED RATES - TARIFF #1**

(N) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY

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

(I) RATES (Customers with metered water supply)

First	2,000	gallons used per month	\$4.21 per 1,000 gallons
Next	28,000	gallons used per month	\$3.21 per 1,000 gallons
All Over	30,000	gallons used per month	\$2.28 per 1,000 gallons

(I) MINIMUM CHARGES

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

5/8 x 3/4	inch meter	\$8.42	per month
3/4	inch meter	\$12.63	per month
1	inch meter	\$21.05	per month
1-1/2	inch meter	\$42.10	per month
2	inch meter	\$67.36	per month
3	inch meter	\$126.30	per month
4	inch meter	\$210.50	per month
6	inch meter	\$421.00	per month
8	inch meter	\$673.60	per month

(C) (I) SALE FOR RESALE

All water for resale to Marshall County PSD #3 and Marshall County PSD #4 will be billed in accordance to the approved rate of \$2.28 per 1,000 gallons used per month.

(C) DELAYED PAYMENT PENALTY

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

(C) RECONNECTION \$25.00

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

(C) TAP FEE

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

A tap fee of \$330.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) (I) RETURNED CHECK CHARGE

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

(C) (I) LEAK ADJUSTMENT

\$0.20 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(C) PUBLIC FIRE PROTECTION

The City of Moundsville shall pay a public fire service charge of \$124.80 per hydrant per annum, payable in twelve equal monthly payments. This charge covers all water system facilities existing at Moundsville, WV, which are used in whole or in part for public fire service.

(C) PRIVATE FIRE PROTECTION

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

1-1/2 service line with hydrants, sprinklers and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$31.20 connection

2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$39.00 connection

2-1/2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$54.00 connection

(C) Indicates change in text

(I) Indicates Increase

(N) Indicates New

**CITY OF MOUNDSVILLE - Water Operations  
CASE NUMBER 05-0641-W-MA**

**APPROVED RATES - TARIFF #2**

(N) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY

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

(I) RATES (Customers with metered water supply)

First	2,000	gallons used per month	\$6.31 per 1,000 gallons
Next	28,000	gallons used per month	\$4.45 per 1,000 gallons
All Over	30,000	gallons used per month	\$3.59 per 1,000 gallons

(I) MINIMUM CHARGES

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

5/8 x 3/4	inch meter	\$12.62	per month
3/4	inch meter	\$18.93	per month
1	inch meter	\$31.55	per month
1-1/2	inch meter	\$63.10	per month
2	inch meter	\$100.96	per month
3	inch meter	\$189.30	per month
4	inch meter	\$315.50	per month
6	inch meter	\$631.00	per month
8	inch meter	\$1,009.60	per month

(C) (I) SALE FOR RESALE

All water for resale to Marshall County PSD #3 and Marshall County PSD #4 will be billed in accordance to the approved rate of \$3.59 per 1,000 gallons used per month.

(C) DELAYED PAYMENT PENALTY

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

(C) RECONNECTION \$25.00

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

(C) TAP FEE

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

A tap fee of \$330.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) (I) RETURNED CHECK CHARGE

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

(C) (I) LEAK ADJUSTMENT

\$0.35 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(C) PUBLIC FIRE PROTECTION

The City of Moundsville shall pay a public fire service charge of \$124.80 per hydrant per annum, payable in twelve equal monthly payments. This charge covers all water system facilities existing at Moundsville, WV, which are used in whole or in part for public fire service.

(C) PRIVATE FIRE PROTECTION

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

1-1/2 service line with hydrants, sprinklers and/or hose connections

\$0.11 per sprinkler head

\$124.80 per hydrant

\$31.20 connection

2 inch service line with hydrants, sprinklers, and/or hose connections

\$0.11 per sprinkler head

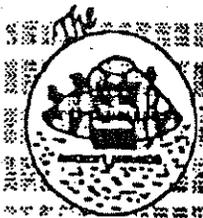
\$124.80 per hydrant

\$39.00 connection

2-1/2 inch service line with hydrants, sprinklers, and/or hose connections  
\$0.11 per sprinkler head  
\$124.80 per hydrant  
\$54.00 connection

- (C) Indicates change in text
- (I) Indicates Increase
- (N) Indicates New





MOUNDVILLE  
DAILY  
**ECHO**  
SINCE 1891

(304) 845-2660  
P.O. BOX 369  
MOUNDVILLE  
WEST VIRGINIA  
26041

**AFFIDAVIT OF PUBLICATION**

STATE OF WEST VIRGINIA,  
COUNTY OF MARSHALL, to wit:

I, Marian Walton, being first duly sworn upon my oath, do depose and say:

- that I am Co-Publisher of the MOUNDVILLE DAILY ECHO, a Republican newspaper;
- that I have been duly authorized to execute this affidavit;
- that such newspaper has been published for over 103 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Moundsville and Marshall County;
- that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
- that such newspaper is circulated to the general public at a definite price or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

PARTY(ies)

City of Moundsville

NATURE (and agency if heard before one)

bond ordinance

CERTIF-BILL TO

STEPTOE & JOHNSON  
POB 1616  
Morgantown WV 26507

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
two	October 19, 26, 2005

BY WORDS	PUBLICATION CHARGES
615@.2012	\$123.74

(signed)

*Marian Walton*

NOTARIZATION

When sworn to and subscribed before me this 26<sup>th</sup> day of October, 2005.

STATE OF WEST VIRGINIA  
LINDA M. MASSIE  
Moundsville Daily Echo  
P. O. Box 369  
Moundsville, West Virginia 26041  
My Commission Expires Jan. 9, 2006

Notary public  
*Linda M. Massie*

**LEGAL ADVERTISEMENT  
NOTICE OF PUBLIC HEARING  
ON CITY OF MOUNDSVILLE  
BOND ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of the City of Moundsville (the "City") to be held on Tuesday, November 1, 2005, at 6:30 p.m. in the Council Chambers at the Moundsville City Hall, 800 Sixth Street, Moundsville, West Virginia, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

**ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATER WORKS SYSTEM REFUNDING BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER WORKS SYSTEM OF THE CITY OF MOUNDSVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN \$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS, AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

The above-entitled Ordinance was approved by the Council on October 18, 2005.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to refund the City's outstanding Waterworks System Refunding Bond Anticipation Notes, Series 2000, and to provide permanent financing of the costs of acquisition and construction of betterments, additions and improvements to the waterworks system of the City and to pay certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the waterworks system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the City Clerk for review by interested parties during regular office hours.

Following the public hearing, the Council intends to enact the Ordinance upon final reading.

Dated: October 18, 2005.

/s/ Sondra Hewitt  
City Clerk

PUBLISH: October 19, 26, 2005.





CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1811  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 1st day of November, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

1     **STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,**  
2     **NOVEMBER 1, 2005**

3  
4     The Council of the City of Moundsville met in Regular Session in the Council Chambers on  
5     November 1, 2005 at 7:00 p.m.

6  
7     Meeting was called to order by Vice Mayor Dennis Wallace.

8  
9     Invocation by Councilperson Mark Simms.

10  
11    City Clerk called the roll and the following council persons were in attendance: Lemasters,  
12    Haynes, Oiler, Simms, Ward and Vice Mayor Wallace. Absent: Mayor DiRemigio (ill). Also  
13    present: City Manager Hendershot, Police Chief Kudlak, Fire Pvt. Shane Ullom, Building  
14    Inspector Wise, Attorney Thomas White, CPA Finance Director Thomas Dobbs and City Clerk  
15    Hewitt. Absent: Clarke (class), Richmond (ill).

16  
17    **MINUTES:**

18  
19    **Regular Council Meeting of October 18, 2005.**

20  
21    Councilperson Oiler made a motion to accept and approve the minutes of the regular council  
22    meeting of October 18, 2005, seconded by Councilperson Ward. Motion carried unanimously.

23  
24    **GENERAL PUBLIC HEARING:**

25  
26    \* Dave White, 406 Clinton Avenue, thanked the city for taking care of the junk vehicles parked  
27    in back yards on Clinton Avenue. He also thanked council for the much needed paving of  
28    Clinton Avenue. Mr. White requested more patrol during the night, because somebody spray  
29    painted the tailgate of his truck. He reported garbage in the yard of a resident on Fourth Street.  
30    Mr. White asked how many meetings does a councilperson have to miss before resigning?

31  
32    Attorney White stated that the city does not have an ordinance concerning council members, but  
33    he will research the issue.

34  
35    \* Jack N. Cunningham, 516 Tenth Street, said that council asked for his resignation when he was  
36    sick during his term on council. Vice Mayor Wallace informed Mr. Cunningham that he will  
37    look back in past minutes to see how many meetings he missed before he resigned.

38  
39    Mr. Cunningham asked council several questions: How many times can residents call the police?  
40    Vice Mayor Wallace answered as many times as they wish. Why does the city have two fire  
41    departments? Why doesn't the police do anything about all the drug dealing going on? And, why  
42    doesn't the news paper print what the residents attending meetings speak about?

1 \* Terry Dunlap, 5 Ford Street, congratulated Moundsville Water Board members and council for  
2 their work in finally getting the approval to build the water plant.

3  
4 \* Lisa Tartar, 1711 Fourth Street, complained that she reported a drug deal going on and the  
5 Police Department did not respond. City Manager Hendershot directed that issue to the Chief of  
6 Police.

7  
8 **OLD BUSINESS:**

9  
10 **Discussion and Approval of an Ordinance Concerning Water Bonds for the City of**  
11 **Moundsville. (Third and Final Reading)**

12  
13 Attorney White read the following ordinance by title only to be passed by council on third and  
14 final reading:

15  
16 **AN ORDINANCE OF THE CITY OF MOUNDSVILLE AUTHORIZING THE**  
17 **REFUNDING OF THE OUTSTANDING WATERWORKS SYSTEM REFUNDING**  
18 **BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE**  
19 **ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS,**  
20 **BETTERMENTS AND WATERWORKS SYSTEM OF THE CITY OF MOUNDSVILLE**  
21 **AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF**  
22 **THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN**  
23 **AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A**  
24 **(UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN**  
25 **\$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS,**  
26 **SERIES 2005 B (WEST VIRGINIA WATER RIGHTS AND REMEDIES OF AND**  
27 **SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING**  
28 **EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE**  
29 **ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A**  
30 **LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE**  
31 **AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND**  
32 **ADOPTING OTHER PROVISIONS RELATING THERETO. (THIRD AND FINAL**  
33 **READING)**

34  
35 Councilperson Simms made a motion to accept and approve the Water Bond Ordinance,  
36 seconded by Councilperson Ward. Motion carried unanimously.

37  
38 **NEW BUSINESS:**

39  
40 **Discussion and Approval of an Ordinance Concerning a Zone Change at 713 Seventh**  
41 **Street from Civic Service District to a Central Business District. (First Reading)**

1 Attorney White read the following Zone Change Ordinance by title only to be passed by council  
2 on first reading:

3  
4 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST**  
5 **VIRGINIA, PROVIDING FOR A ZONING CHANGE OF A CERTAIN DESIGNATED**  
6 **AREA AT 713 SEVENTH STREET IN THE CITY OF MOUNDSVILLE FROM A CIVIC**  
7 **SERVICE DISTRICT TO A CENTRAL BUSINESS DISTRICT. (FIRST READING)**  
8

9 Councilperson Simms made a motion to amend the ordinance (which was a typo-1916 First  
10 Street) to read 713 Seventh Street, seconded by Councilperson Ward. Motion carried  
11 unanimously.

12  
13 Councilperson Simms made a motion to accept and approve the zone change ordinance as  
14 amended, seconded by Councilperson Haynes.

15  
16 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 6 yeas.  
17 Motion carried unanimously.

18  
19 **Discussion and Approval of an Ordinance for a Safety & Health Loss Control Manual for**  
20 **the City of Moundsville. (First Reading)**  
21

22 Attorney White read the following ordinance by title only to be passed by council on first  
23 reading:

24  
25 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST**  
26 **VIRGINIA, TO ENACT SECTION 155.17 OF THE EMPLOYEE POLICY**  
27 **REGULATIONS PROVIDING FOR A SAFETY AND HEALTH/LOSS CONTROL**  
28 **PROGRAM FOR CITY EMPLOYEES. (FIRST READING)**  
29

30 Councilperson Simms made a motion to accept and approve an Ordinance Concerning Employee  
31 Policy Regulations, seconded by Councilperson Oiler.

32  
33 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 6 yeas.  
34 Motion carried unanimously.

35  
36 **Discussion and Approval of an Ordinance Concerning the Distance Between Liquor**  
37 **Establishments, Schools and Churches. (First Reading)**  
38

39 Attorney White read the following ordinance by title only to be passed by council on first  
40 reading:

41  
42 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST**  
43 **VIRGINIA, AMENDING ARTICLE 1381 OF THE CODE OF THE CITY OF**

1 **MOUNDSVILLE, PERTAINING TO LOCATIONS FOR LIQUOR ESTABLISHMENTS,**  
2 **BY AMENDING SECTION 1381.18 OF SAID ARTICLE TO PROVIDE FOR THE**  
3 **METHOD OF MEASUREMENTS OF THE 300 FOOT PROHIBITION OF LIQUOR**  
4 **ESTABLISHMENTS FROM CHURCHES AND SCHOOLS. (FIRST READING)**  
5

6 Vice Mayor Wallace made a motion to approve the above ordinance, seconded by Councilperson  
7 Ward.

8  
9 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 6 yeas.  
10 Motion carried unanimously.

11  
12 **Discussion and Approval of Bids for Copper at the Water Office.**

13  
14 Two bids were received for the copper in the amounts of \$300 & \$700. Manager Hendershot  
15 recommended that council reject the bids, haul the copper to the Street Department, weigh the  
16 copper themselves, then rebid.

17  
18 Councilperson Simms made a motion to reject the bids, seconded by Councilperson Ward.  
19 Motion carried unanimously.

20  
21 **Other Items to be Discussed by Council.**

22  
23 **Governor Manchin Declared Holiday.**

24  
25 Governor Manchin declared the Friday after Thanksgiving a holiday by taking Lincoln's  
26 Birthday and Washington's Birthday in February and making one day as President's Day.

27  
28 **MANAGER ITEMS:**

29  
30 **American Education Week Proclamation.**

31  
32 Representatives from Marshall County Schools will be meeting at the Glen Dale City Building  
33 on Thursday, November 10, 2005 at 12:00 p.m. to sign a proclamation declaring American  
34 Education Week for Marshall County the week of November 13 to November 19. They are  
35 asking for local Mayors or Representatives of the communities to attend.

36  
37 **Employee Christmas Bonus.**

38  
39 Christmas Bonuses will be given to full time employees in the amount of \$250 and part time \$50.  
40 These amounts have already been figured into the budget.

41  
42 Councilperson Haynes made a motion to grant employee bonuses, seconded by Councilperson  
43 Simms. Motion carried unanimously.

1 **Landfill Bridge Project.**

2  
3 Minor adjustments have been made to the contract presented by the state. The contract has been  
4 resubmitted and will be sent to the Attorney General's Office for approval. If the Attorney  
5 General approves the adjustments, the city will be able enter into the contractual agreement to  
6 have the bridge reconstructed at the landfill.

7  
8 **Timbering Plan for Landfill.**

9  
10 City Manager Hendershot has entered into a contract with John Stephens for timbering of the  
11 city's landfill. Mr. Stephens will be the timbering agent, marking the timber and will be  
12 charging 10% which is cheaper than others that the Manager had contracted.

13  
14 **Free Parking for Holidays.**

15  
16 Councilperson Simms made a motion to provide free parking in Moundsville on Saturday's the  
17 month of December and two weeks before Christmas, seconded by Councilperson Oiler. Motion  
18 carried unanimously.

19  
20 **Homeland Security Grant.**

21  
22 Manager Hendershot announced that the Fire Department was awarded a grant through the  
23 Department of Homeland Security, Assistance to Firefighters Grant Program in the amount of  
24 \$15,000. The Federal Government is providing \$14,250 will provide a match of \$750. The  
25 monies will enable the fire department to purchase new fire hose, ladders and hose adapters to  
26 replace outdated and frayed equipment.

27  
28 Councilperson Simms made a motion to authorize the City Manager to enter into a contract with  
29 the Department of Homeland Security, seconded by Councilperson Oiler. Motion carried  
30 unanimously.

31  
32 **Department of Corrections Luncheon.**

33  
34 The Department of Corrections has received an excellent award from the American Correctional  
35 Association. To celebrate the award and in recognition of their staff they will be hosting a  
36 luncheon on Tuesday, November 8, 2005 at 11:00 a.m., at the Regional Jail.

37  
38 **Jefferson Extension Sidewalk Project.**

39  
40 Senator Kessler provided the City Manager with a copy of a letter received from the West  
41 Virginia Department of Transportation regarding the Jefferson Avenue Extension Bridge project.  
42 The bridge project is tentatively scheduled to be replaced in 2008.

1 After a brief discussion, council decided to proceed with the sidewalk project because of the  
2 pedestrians going to and from Wal-Mart. Manager Hendershot advised that he will contact the  
3 Department of Highways and move forward with the project.  
4

5 **Other Items to be Discussed by the City Manager.**

6  
7 **Legal Ads by Attorney Thomas White.**

8  
9 Attorney White presented legal ads published in the Moundsville Daily Echo to be received and  
10 filed by council.  
11

- 12 1. Sealed Bids for Copper at the Water Department.

13  
14 Vice Mayor Wallace made a motion to receive and file the certificate of publication, seconded by  
15 Councilperson Simms. Motion carried unanimously.  
16

17 **MAYOR ITEMS:**

18  
19 Vice Mayor Wallace congratulated the Water Board, the Water Department Employees and  
20 Council for the work they have done and the time they have put into the Water Treatment Plant  
21 Project.  
22

23 **COMMITTEE REPORTS:**

24  
25 **Discussion and Approval of Recommendations by the Finance Committee.**

26  
27 Vice Mayor Wallace scheduled a Finance Meeting on Tuesday, November 8, 2005 at 6:00 p.m.  
28

29 **Discussion and Approval of Recommendations by the Traffic Committee.**

30  
31 Councilperson Simms scheduled a Traffic Meeting following the Finance Meeting.  
32

33 **Discussion and Approval of Recommendations by the Policy Committee.**

34  
35 Councilperson Oiler scheduled a Policy Meeting following the Traffic Meeting.  
36

37 **COUNCIL ITEMS:**

38  
39 \* **Oiler** - Reported garbage in front of 707 Lockwood Avenue. Manager Hendershot advised that  
40 he has left a message for Commissioner Richmond.  
41

42 \* Directed a comment to Mrs. Tartar asking her to continue reporting problems in her  
43 neighborhood to the police department.

1 \* Directed a comment to Mr. Cunningham telling him that he is not doing the citizen's in  
2 Moundsville any good by turning the other cheek & not reporting problems to the police  
3 department.  
4  
5 \* **Simms** - Reported that the median at 6th & Lafayette Avenue has a large amount of gravel  
6 laying beside it.  
7  
8 \* **Ward** - Nothing at this time.  
9  
10 \* **Lemasters** - Noted that the Tire Amnesty Project is coming up this month, hopes that Marshall  
11 County & Moundsville citizens take advantage of it.  
12  
13 \* Asked that the door at the prison garage be fixed, it has been sprung.  
14  
15 \* Wished to thank the Sanitation Department for an excellent job picking up excess garbage.  
16 City Manager Hendershot commented that the city is going to have to address the volume of  
17 garbage that citizen's are putting out.  
18  
19 \* Asked if the street sweeper is working good. Sweeper operator Kevin Wallace reported that  
20 the sweeper is picking up very well.  
21  
22 \* Commented that the city did pave the alley beside Sanford School for employees to use. Also,  
23 if the School Board decides to close some of the schools in Moundsville, they need discuss  
24 having them demolished instead of leaving them set empty like the Moundsville Jr. High School.  
25  
26 Manager Hendershot noted that in his discussions with Board Members and Mr. Renzella he  
27 stressed that the city hopes the School Board has plans for the buildings.  
28  
29 \* **Haynes** - Nothing at this time.  
30  
31 Councilperson Haynes made a motion to go into an Executive Session for contractual and real  
32 estate matters, seconded by Councilperson Lemasters. Motion carried unanimously.  
33  
34 Meeting adjourned at 7:54 p.m.  
35  
36 Executive Session began at 8:00 p.m.  
37  
38 Executive Session adjourned at 8:32 p.m.  
39  
40 Regular Session reconvened at 8:32 p.m.  
41  
42 Councilperson Simms made a motion to adjourn, seconded by Councilperson Oiler. Motion  
43 carried unanimously.

1 Meeting adjourned at 8:32 p.m.  
2  
3  
4  
5

6  
7  
8 

---

Sondra J. Hewitt, City Clerk  
9  
10

  
8 

---

Dennis Wallace, Vice Mayor



MOUNDSVILLE, WEST VIRGINIA

CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, **SONDRA J. HEWITT**, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 18th day of October, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

1 **STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,**  
2 **OCTOBER 18, 2005**

3  
4 The Council of the City of Moundsville met in Regular Session in the Council Chambers on  
5 October 18, 2005 at 7:00 p.m.

6  
7 Meeting was called to order by Vice Mayor Dennis Wallace.

8  
9 Invocation by Councilperson Mark Simms.

10  
11 City Clerk called the roll and the following council persons were in attendance: Oiler, Simms,  
12 Ward and Vice Mayor Wallace. Absent: Mayor DiRemigio (ill), Haynes (vac), Lemasters (vac).  
13 Also present: Acting City Manager Deanna J Hess, Police Chief Kudlak, Fire Pvt. Shane Ullom,  
14 Street Department Foreman Chuck Richmond, Building Inspector Vickers, Attorney Thomas  
15 White, CPA Finance Director Thomas Dobbs and City Clerk Hewitt. Absent: City Manager  
16 Hendershot (vac), Fire Chief Clarke (attending class), Street Commissioner Richmond (ill).

17  
18 **MINUTES:**

19  
20 **Regular Council Meeting of October 4, 2005.**

21  
22 Councilperson Oiler made a motion to accept and approve the regular council meeting of  
23 October 4, 2005, seconded by Councilperson Simms. Motion carried unanimously.

24  
25 **GENERAL PUBLIC HEARING:**

26  
27 \* Beth Phillips, 72 Highland Avenue, expressed their thanks to council for passing the resolution  
28 on behalf of the parents, grandparents & friends of the children that attend two of the elementary  
29 schools proposed to be closed in the City of Moundsville.

30  
31 Vice Mayor Wallace again expressed that council does not want to second-guess the Marshall  
32 County Board of Education. City Council members are officials elected to make decisions in the  
33 city just like the Board of Education is officials elected to make decisions for the betterment of  
34 the school system.

35  
36 **OLD BUSINESS:**

37  
38 **Discussion and Approval of an Ordinance Concerning Water Bonds for the City of**  
39 **Moundsville. (Second Reading)**

40  
41 Attorney White read the following ordinance by title only to be passed by council on second  
42 reading:

1 AN ORDINANCE OF THE CITY OF MOUNDSVILLE AUTHORIZING THE  
2 REFUNDING OF THE OUTSTANDING WATERWORKS SYSTEM REFUNDING  
3 BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE  
4 ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS,  
5 BETTERMENTS AND WATERWORKS SYSTEM OF THE CITY OF MOUNDSVILLE  
6 AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THERE OF  
7 THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN  
8 AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005A  
9 (UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN  
10 \$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS,  
11 SERIES 2005 B (WEST VIRGINIA RIGHTS AND REMEDIES OF AND SECURITY  
12 FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION  
13 AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH  
14 BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT  
15 RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR  
16 THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHERS  
17 PROVISIONS RELATING THERETO. (SECOND READING)  
18

19 Councilperson Simms made a motion to accept and approve the above Water Bond Ordinance,  
20 seconded by Councilperson Oiler.  
21

22 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 4 yeas.  
23 Motion carried unanimously.  
24

25 **NEW BUSINESS:**  
26

27 **Discussion and Approval of a Recommendation by the Planning Commission Concerning a**  
28 **Zone Change at 713 Seventh Street from C-S to C-C.**  
29

30 Councilperson Simms made a motion to direct the City Attorney to draft an ordinance for the  
31 Zone Change at 713 Seventh Street, seconded by Councilperson Ward. Motion carried  
32 unanimously.  
33

34 **Other Items to be Discussed by Council.**  
35

36 \* Councilperson Simms recommended that council discuss the possibility of enacting a  
37 moratorium in efforts to build the business community rather than establishing coffee shops.  
38 Attorney White advised he would have to research the matter before giving council any advise.  
39

40 \* Vice Mayor Wallace announced that construction of a Wallboard Plant will be built in  
41 Marshall County near the Mitchell-Kammer Plant.  
42

43 **MANAGER ITEMS:**

1 **Business After Hours.**

2  
3 Acting City Manager Hess announced that Business After Hours will be held on October 27,  
4 2005 from 5:00 to 7:00 at the Grandview Park Pool Room, sponsors will be Bayer Credit Union  
5 and Ked's Ace Hardware.  
6

7 **Special Sanitary Board Meeting.**

8  
9 The Sanitary Board will hold a special meeting with WV DEP and City Council concerning  
10 administrative orders to raise rates. The meeting will be on October 25, 2005 at 6:00 p.m. at the  
11 City of Moundsville Council Chambers.  
12

13 **Letter of Commendation to Lt. Robinson and the Moundsville Police Department.**

14  
15 Councilperson Haynes wished to thank Lt. Robinson and the Police Department for their quick  
16 response and arrest of an individual who was attempting to defraud business owners in  
17 Moundsville.  
18

19 Councilperson Simms made a motion to award a letter of commendation, seconded by  
20 Councilperson Oiler. Motion carried unanimously.  
21

22 **Jefferson Avenue Extension Bridge.**

23  
24 A copy of the letter sent to Governor Manchin from Senator Kessler concerning the Jefferson  
25 Avenue Extension Bridge. The letter stated that the bridge project was originally scheduled for  
26 2006 then pushed back to 2008 and once again beyond 2009. The primary concern for the delay  
27 for this project is additional traffic created by the new Wal Mart and lack of sidewalks for  
28 pedestrians to cross the bridge. If the sidewalks are constructed now, it would be necessary to  
29 demolish them since the temporary bridge would be constructed in the same area.  
30

31 **Bishop Donahue Walk A Thon.**

32  
33 A letter of thanks was sent to the City Manager and Council for their donation to the Bishop  
34 Donahue Walk A Thon. This year the students raised \$9,000. The money will be used for text  
35 books, campus ministry programs and lab improvements.  
36

37 **Letter of Thanks.**

38  
39 Randy Chamberlain of Chamberlain Agency sent a letter to express his appreciation for the  
40 recent paving of Clinton Avenue.  
41  
42  
43

1 **Letters from Board of Education Members.**

2  
3 The City of Moundsville Manager and Council received letters from Board of Education  
4 Members concerning council's recent approval of a resolution in support of parents, grandparents  
5 and friends of children attending two elementary schools in Moundsville proposed to be closed.  
6

7 **Other Items to be Discussed by the City Manager.**

8  
9 **Legal Ads by Attorney Thomas White.**

10  
11 Attorney White present legal ads published in the Moundsville Daily Echo to be received and  
12 filed by council.  
13

- 14 1. Ordinance for Zone Change at 1916 First Street.
- 15 2. Ordinance Concerning WVML Municipal Revenue Enhancement Program.

16  
17 Councilperson Simms made a motion to receive and file the legal ads, seconded by  
18 Councilperson Oiler. Motion carried unanimously.  
19

20 **MAYOR ITEMS:**

21  
22 **Jefferson Avenue Sidewalk Project.**

23  
24 Vice Mayor Wallace expressed that council should move forward with the sidewalk project on  
25 Jefferson Avenue Extension. He requested this project be placed on the Traffic Committee  
26 Agenda.  
27

28 **COMMITTEE REPORTS.**

29  
30 **Discussion and Approval of Recommendations by the Finance Committee.**

31  
32 Vice Mayor Wallace asked Attorney White if he could re-appoint council members to new  
33 committees in the absence of Mayor DiRemigio.  
34

35 **Discussion and Approval of Recommendations by the Traffic Committee.**

- 36  
37 1. Discussion and Approval of a Request by the American Legion to Pay ½ of the Cost to Pave  
38 Compton Avenue.

39  
40 Councilperson Simms made a motion to pay \$750 of the \$1500 cost to pave Compton Avenue,  
41 seconded by Councilperson Oiler. Motion carried unanimously.  
42  
43

1 **Discussion and Approval of Recommendations by the Policy Committee.**

2  
3 1. Discussion of a Recommendation to Direct the City Attorney to Draft an ordinance for a  
4 Safety & Health Loss Control Manual.

5  
6 Councilperson Oiler made a motion to direct the City Attorney to draft an ordinance for a Safety  
7 & Health Loss Control Manual, seconded by Councilperson Simms. Motion carried  
8 unanimously.

9  
10 2. Discussion and Approval of a Recommendation to Direct the City Attorney to Draft an  
11 Ordinance Concerning the Distance Between Liquor Establishments, Schools and Churches.

12  
13 Councilperson Oiler made a motion to direct the City Attorney to draft and ordinance concerning  
14 the distance between liquor establishments, schools and churches, seconded by Councilperson  
15 Simms. Motion carried unanimously.

16  
17 **COUNCIL ITEMS:**

18  
19 \* **Ward** - Nothing at this time.

20  
21 \* **Simms** - Nothing at this time.

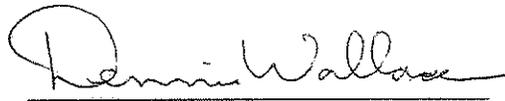
22  
23 \* **Oiler** - Commend Klug Brothers for the Thompson Avenue paving project.

24  
25 \* **Wallace** - Nothing at this time.

26  
27 Councilperson Oiler made a motion to adjourn, seconded by Councilperson Ward. Motion  
28 carried unanimously.

29  
30 Meeting adjourned at 7:35 p.m.

31  
32  
33  
34  
35  
36 \_\_\_\_\_  
Sondra J Hewitt, City Clerk

  
\_\_\_\_\_  
Dennis Wallace, Vice Mayor



CITY OF  
*M*oundsville

MOUNDSVILLE, WEST VIRGINIA

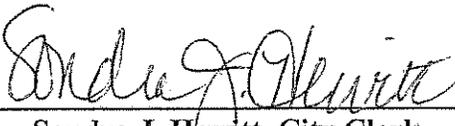
CLERK'S OFFICE 304-845-3394  
CITY MANAGER 304-845-6300  
POLICE DEPT 304-845-1611  
FIRE DEPT 304-845-2050  
CLERK FAX 304-845-7130

### CERTIFICATION

I, SONDRA J. HEWITT, City Clerk of the City of Moundsville, do hereby certify that the foregoing is a true, accurate, and exact copy of that certain document of the City of Moundsville on the 4th day of October, 2005.

Given under my hand this 6th day of December, 2005.

(SEAL)

  
\_\_\_\_\_  
Sondra J. Hewitt, City Clerk

1 **STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,**  
2 **OCTOBER 4, 2005**

3  
4 The Council of the City of Moundsville met in Regular Session in the Council Chambers on  
5 October 4, 2005 at 7:00 p.m.

6  
7 Meeting was called to order by Vice Mayor Dennis Wallace.

8  
9 Invocation by City Manager Hendershot.

10  
11 City Clerk called the roll and the following council persons were in attendance: Haynes,  
12 Lemasters, Oiler, Ward and Vice Mayor Wallace. Absent: Mayor DiRemigio(ill) and  
13 Councilperson Simms (ill). Also present: City Manager Hendershot, Police Chief Kudlak, Fire  
14 Pvt. Ullom, Street Commissioner Richmond, Building Inspector Vickers, Attorney Thomas  
15 White, CPA Finance Director Thomas Dobbs and City Clerk Hewitt. Absent: Fire Chief Clarke  
16 (attending class).

17  
18 **MINUTES:**

19  
20 **Regular Council Meeting of September 20, 2005.**

21  
22 Councilperson Lemasters made a motion to accept and approve the minutes of the regular  
23 council meeting of September 20, 2005, seconded by Councilperson Oiler. Motion carried  
24 unanimously.

25  
26 **PRESENTATION:**

27  
28 Vice Mayor Wallace presented a Certificate of Appreciation to Lieutenant Michael Hummel of  
29 the Fire Department who resigned after ten years of service.

30  
31 **GENERAL PUBLIC HEARING:**

32  
33 \* Gilbert Lashare, 64 Linden Avenue, reported that several month ago he reported while the city  
34 was delivering a dumpster the corner caught the TV & phone cables. He also stated that a piece  
35 of wood was pulled down from his roof when the cables caught the dumpster.

36  
37 Street Commissioner Richmond reported they called the TV & phone company concerning the  
38 cables. He was unaware of the piece of wood from his roof. When he spoke with Mr. Lashare,  
39 he never mentioned the wood.

40  
41 Vice Mayor Wallace asked Mr. Richmond if he could look at the roof tomorrow.  
42  
43

1 \* Dennis Wingrove, RD 3 Box 97, Moundsville stated that he owned the property that adjoins  
2 the City Landfill. He asked City Manager Hendershot if the city was going to have the property  
3 surveyed before they start timbering because a man was on his property trying to find the  
4 property line and was approximately 1/2 mile onto his property.

5  
6 Manager Hendershot reported that the city is going to hire a Forestry Agent prior to going out to  
7 bid and the property will be surveyed before project is put out for bid.

8  
9 **Discussion and Approval of an Ordinance Concerning a Zone Change at 1916 First Street**  
10 **(Larry Kidd Property) from R-U to C-N. (Second Reading)**

11  
12 Attorney White read the following zone change ordinance by title only to be passed by council  
13 on second and final reading:

14  
15 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST**  
16 **VIRGINIA, PROVIDING FOR A ZONING CHANGE OF A CERTAIN DESIGNATED**  
17 **AREA AT 1916 FIRST STREET IN THE CITY OF MOUNDSVILLE FROM AN URBAN**  
18 **RESIDENTIAL DISTRICT TO A NEIGHBORHOOD COMMERCIAL DISTRICT.**  
19 **(SECOND READING)**

20  
21 Councilperson Haynes made a motion to accept and approve the zone change ordinance,  
22 seconded by Councilperson Ward.

23  
24 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 5 yeas.  
25 Motion carried unanimously.

26  
27 **Discussion and Approval of an Ordinance Concerning the WVML Municipal Revenue**  
28 **Enhancement Program. (Second Reading)**

29  
30 Attorney White read the following Municipal Revenue Enhancement Program ordinance by title  
31 only to be passed by council on second and final reading:

32  
33 **AN ORDINANCE AUTHORIZING PARTICIPATION IN WVML MUNICIPAL**  
34 **REVENUE ENHANCEMENT PROGRAM AND THE EXECUTION OF THE**  
35 **INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF INFORMATION**  
36 **AMONG THE CITY OF MOUNDSVILLE, THE WEST VIRGINIA MUNICIPAL**  
37 **LEAGUE, INC., AND PARTICIPATING MUNICIPALITIES. (SECOND READING)**

38  
39 Councilperson Haynes made a motion to accept and approve the above ordinance, seconded by  
40 Councilperson Lemasters.

41  
42 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 5 yeas.  
43 Motion carried unanimously.

1 **NEW BUSINESS:**

2  
3 **Discussion and Approval of an Ordinance Concerning Water Bonds for the City of**  
4 **Moundsville. (First Reading)**

5  
6 Attorney White read the following City of Moundsville Water Bond Ordinance by title only to be  
7 passed by council on first reading:

8  
9 **AN ORDINANCE OF THE CITY OF MOUNDSVILLE AUTHORIZING THE**  
10 **REFUNDING OF THE OUTSTANDING WATERWORKS SYSTEM REFUNDING**  
11 **BOND ANTICIPATION NOTES, SERIES 2000; AND AUTHORIZING THE**  
12 **ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS,**  
13 **BETTERMENTS AND WATERWORKS SYSTEM OF THE CITY OF MOUNDSVILLE**  
14 **AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF**  
15 **THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$7,000,000 IN**  
16 **AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A**  
17 **(UNITED STATES DEPARTMENT OF AGRICULTURE) AND NOT MORE THAN**  
18 **\$13,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS,**  
19 **SERIES 2005 B (WEST VIRGINIA WATER RIGHTS AND REMEDIES OF AND**  
20 **SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING**  
21 **EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE**  
22 **ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A**  
23 **LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE**  
24 **AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND**  
25 **ADOPTING OTHER PROVISIONS RELATING THERETO. (FIRST READING)**

26  
27 Councilperson Haynes made a motion to approve the above Moundsville Water Bond Ordinance,  
28 seconded by Councilperson Ward.

29  
30 Vice Mayor Wallace called for a voice vote. City Clerk announced the following tally. 5 yeas.  
31 Motion carried unanimously.

32  
33 **Discussion and Approval of Payment to James V. Kelsh in the Amount of \$12,095.28 for**  
34 **the new Water Treatment Plant Project.**

35  
36 Councilperson Haynes made a motion to approve payment to James V. Kelsh in the amount of  
37 \$12,095.28, seconded by Councilperson Oiler. Motion carried unanimously.

38  
39 **Discussion and Approval of a Request from the Moundsville Water Board to Name the**  
40 **Two Access Roads to the Moundsville Water Wells DiRemigio Drive and Langin Drive.**

41  
42 Discussion was held on naming one access road DiRemigio Drive and changing the other access  
43 road to Hitt Drive instead of Langin Drive. Attorney White advised that council must make a

1 motion on the original resolution (DiRemigio Drive and Langin Drive) then make a motion to  
2 amend the resolution.

3  
4 Councilperson Haynes made a motion to name the two access roads to the Moundsville Water  
5 Wells DiRemigio Drive and Langin Drive, seconded by Councilperson Oiler.

6  
7 Councilperson Haynes made motion to amend the original resolution to name to access roads  
8 DiRemigio Drive and Hitt Drive, seconded by Vice Mayor Wallace. Motion carried  
9 unanimously.

10  
11 Vice Mayor Wallace asked council members all in favor of the original motion. Motion carried  
12 unanimously.

13  
14 **Other Items Discussed by Council.**

15  
16 \* Councilperson Haynes suggested that council adopt a resolution in support of the teachers,  
17 parents and grandparent of children attending Sanford School & Park View School to keep them  
18 open.

19  
20 Vice Mayor Wallace commented that he did not wish to influence the decision of the Marshall  
21 County Board of Education.

22  
23 After some discussion, Councilperson Haynes made a motion to adopt a resolution concerning  
24 support of keeping Sanford School & Park View School open, seconded by Councilperson  
25 Lemasters. Motion carried unanimously.

26  
27 **MANAGER ITEMS:**

28  
29 **Update on Jefferson Avenue Bridge Project.**

30  
31 At a recent September 14th Bel-O-Mar meeting concerning the Transportation Improvement  
32 Program schedule it was brought to the City Manager's attention that Department of Highways  
33 has taken Moundsville's Jefferson Avenue Extension Bridge project off of their calendar which  
34 runs beyond 2009. Since the meeting, Manager Hendershot has been in contact with Jeff  
35 Harpold, Head of the WV Department of Transportation Sidewalk Grant, who recommended that  
36 the city delay the Jefferson Avenue Extension sidewalk project until the bridge is constructed.  
37 Manager Hendershot noted that Senator Jeff Kessler said that Governor Manchin would like to  
38 see Moundsville's Bridge project be placed back on the priority list.

39  
40 Manager Hendershot stated that he hopes that he and council members attending the Marshall  
41 County Chamber of Commerce Dinner will be able to meet with the Governor. Councilperson  
42 Ward commented that he would like to speak to him concerning the I-68 project being taken off  
43 the priority list also.

1       **AARP Program.**

2  
3       Manager Hendershot reported that the City of Moundsville is participating in a program with  
4       AARP as host sponsor to secure employment for seniors through a program called Senior  
5       Community Service. There has never been a program of this type in Marshall County and the  
6       City of Moundsville is the first to be involved with this. The city has obtained two seniors for  
7       this program. One is working in the City Clerk's Office and the other is with the Police  
8       Department. There is no cost to the City for participating. The cost is covered through the  
9       Department of Labor.

10  
11       **DUI Reimbursement.**

12  
13       The city received a check in the amount of \$1900.42 for DUI patrols during the May 2005 Blitz  
14       period. During the blitz, officers worked a total of overtime hours resulting in 84 traffic stops  
15       that netted 55 citations.

16  
17       **Engineering Review of City Structures.**

18  
19       Burgess and Niple has quoted an amount of approximately \$21,000 for the structural and code  
20       reviews of the City Building, Public Works garage and the Police Department. Burgess and  
21       Niple would like to meet at a Finance Committee Meeting.

22  
23       **Review of City Code.**

24  
25       Manager Hendershot and Attorney White discussed reviewing the city code concerning the  
26       distance between liquor establishments, schools and churches and to standardize city code with  
27       the state code.

28  
29       Further discussion was held to send this item to the Policy Committee.

30  
31       **Forest Management Plan.**

32  
33       City Manager contacted John M. Stephens, Appalachian Forest Management to perform the  
34       Forest Management Plan at the City of Moundsville landfill.

35  
36       Vice Mayor Wallace made a motion to perform the Forest Management Plan for the City of  
37       Moundsville landfill, seconded by Councilperson Oiler. Motion carried unanimously.

38  
39       **Other Items to be Discussed by the City Manager.**

40  
41       **Certificates of Publication by Attorney White.**

1 Attorney White presented legal ads published in the Moundsville Daily Echo to be received and  
2 filed by council:

- 3
- 4 1. Ordinance Concerning WVML Municipal Revenue Enhancement Program
- 5 2. Ordinance for Zone Change at 1916 First Street
- 6 3. (3) Civil Action Suits
- 7 4. Public Hearing Notice for Zone Change at 805 10th Street
- 8 5. Public Hearing Notice for Zone Change at 713 Seventh Street
- 9

10 Councilperson Haynes made a motion to receive and file the legal ads, seconded by  
11 Councilperson Lemasters. Motion carried unanimously.

12  
13 **MAYOR ITEMS:**

14  
15 \* Vice Mayor Wallace expressed his opinion on the need for a Water Treatment Plant in  
16 Moundsville.

17  
18 **COMMITTEE REPORTS:**

19  
20 **Discussion and Approval of Recommendations by the Finance Committee.**

21  
22 Vice Mayor Wallace scheduled a Finance Committee Meeting for Wednesday, October 12, 2005  
23 at 6:00 p.m.

24  
25 **Discussion and Approval of Recommendations by the Traffic Committee.**

26  
27 Councilperson Ward scheduled a Traffic Committee Meeting to follow the Finance Meeting.

28  
29 **Discussion and Approval of Recommendations by the Policy Committee.**

30  
31 Councilperson Oiler scheduled a Policy Committee Meeting to follow the Traffic Meeting.

32  
33 **COUNCIL ITEMS:**

34  
35 \* **Ward** - Nothing at this time.

36  
37 \* **Oiler** - Asked Manager Hendershot if he had spoken to Mr. Wood about his parking lot.  
38 Manager Hendershot advised that planting hedges along the parking lot was discussed at a  
39 Zoning Meeting. Manager Henderhsot contacted Mr. Wood who advised him they were going to  
40 do something to keep the dust down.

41  
42 \* Asked Manager Hendershot if he had found out anything concerning the barn next to the  
43

1 Stephens house. Manager Hendershot advised that Building Inspector Wise has already talked to  
2 the owners and he is working with them..

3  
4 \* **Lemasters** - Received complaints that people were parking in the middle of the alley at the end  
5 of 5th & Cedar Avenue.

6  
7 \* **Wallace** - Commended the businesses on Jefferson Avenue for upgrading their business fronts  
8 and he has noticed more people frequenting the Jefferson Avenue.

9  
10 Manager Hendershot noted that the Jefferson Avenue Business District has formed an  
11 organization known as the Downtown Business Organization. Their goal is to capitalize on the  
12 new business that will be brought into town.

13  
14 \* **Haynes** - Reported that City Manager Hendershot is working on the bid spec for the sale of  
15 copper.

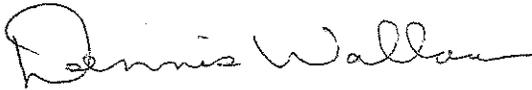
16  
17 \* Commented that the Solid Waste Authority was set up at the Fairgrounds a couple of weeks  
18 ago and collected tires & rims. On the same day, he road down Elm Avenue & Mulberry  
19 Avenue a counted 22 tires in that area. The City needs to enforce the ordinance relating to tires  
20 in Moundsville.

21  
22 Vice Mayor Wallace asked that while the Police Officers are patrolling they write down the  
23 locations of these problems so they can be addressed.

24  
25 Councilperson Haynes made a motion to adjourn, seconded by Councilperson Lemasters.  
26 Motion carried unanimously.

27  
28 Meeting adjourned at 7:50 p.m.  
29  
30  
31

32  
33  
34 \_\_\_\_\_  
Sondra J. Hewitt, City Clerk

  
\_\_\_\_\_  
Dennis Wallace, Vice Mayor

1 **STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,**  
2 **DECEMBER 13, 2005**

3  
4 The Council of the City of Moundsville met in Special Session in the Council Chambers on  
5 December 13, 2005 at 6:30 p.m.

6  
7 The Special Meeting was called for the following purposes:

- 8  
9 1) Discussion and Approval of a Supplemental Resolution Providing as to Principal  
10 Amounts, Dates, Maturity Dates, Redemption Provisions, Interest Rates, Interest  
11 and Principal Payment Dates, Sale Prices and Other Terms of the Water Revenue  
12 Bonds, Series 2005 A (United States Department of Agriculture) and Water  
13 Revenue Bonds, Series 2005 B (West Virginia Water Development Authority), of  
14 the City of Moundsville; Approving and Ratifying the Loan Agreement Relating  
15 to the Series 2005 B Bonds; Authorizing and Approving the Sale of the Series  
16 2005 A Bonds to the United States Department of Agriculture and the Series 2005  
17 B Bonds to the West Virginia Water Development Authority; Designating a  
18 Registrar, Paying Agent and Depository Bank; and Making Other Provisions as to  
19 the Bonds.  
20  
21 2) Discussion and Approval of a Resolution Authorizing Payment of the Project  
22 Costs Set Fourth in Requisition No. 1 of the Bond Proceeds Which Shall Be  
23 Presented to Council for Review.  
24

25 Meeting was called to order by Vice Mayor Dennis Wallace.

26  
27 The following council members were in attendance: Haynes, Lemasters, Oiler, Simms, Ward and  
28 Vice Mayor Wallace. Absent: DiRemigio. Also present: City Manager Hendershot, Attorney  
29 Thomas White, Asst. Finance Director Jane Criswell, City Clerk Hewitt and Vince Collins, Bond  
30 Attorney from Steptoe & Johnson.  
31

32 **Discussion and Approval of a Supplemental Resolution Providing as to Principal Amounts,**  
33 **Dates, Maturity Dates, Redemption Provisions, Interest Rates, Interest and Principal**  
34 **Payment Dates, Sale Prices and Other Terms of the Water Revenue Bonds, Series 2005 A**  
35 **(United States Department of Agriculture) and Water Revenue Bonds, Series 2005 B (West**  
36 **Virginia Water Development Authority), of the City of Moundsville; Approving and**  
37 **Ratifying the Loan Agreement Relating to the Series 2005 B Bonds; Authorizing and**  
38 **Approving the Sale of the Series 2005 A Bonds to the United States Department of**  
39 **Agriculture and the Series 2005 B Bonds to the West Virginia Water Development**  
40 **Authority; Designating a Registrar, Paying Agent and Depository Bank; and Making**  
41 **Other Provisions as to the Bonds.**  
42  
43

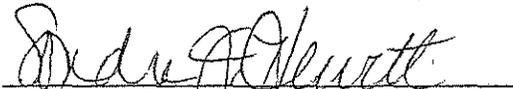
1 After an presentation by Vince Collins, Bond Attorney from Steptoe & Johnson, Councilperson  
2 Simms made a motion to approve the Supplemental Resolution, seconded by Councilperson  
3 Lemasters. Motion carried unanimously.  
4

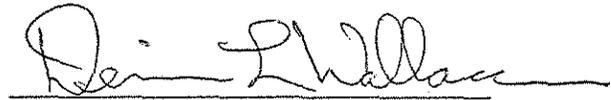
5 **Discussion and Approval of a Resolution Authorizing Payment of the Project Costs Set**  
6 **Fourth in Requisition No. 1 of the Bond Proceeds Which Shall Be Presented to Council for**  
7 **Review.**  
8

9 After a brief presentation by Vince Collins, Councilperson Simms made a motion to approve the  
10 Requisition Resolution for the Water Board, seconded by Councilperson Lemasters. Motion  
11 carried unanimously.  
12

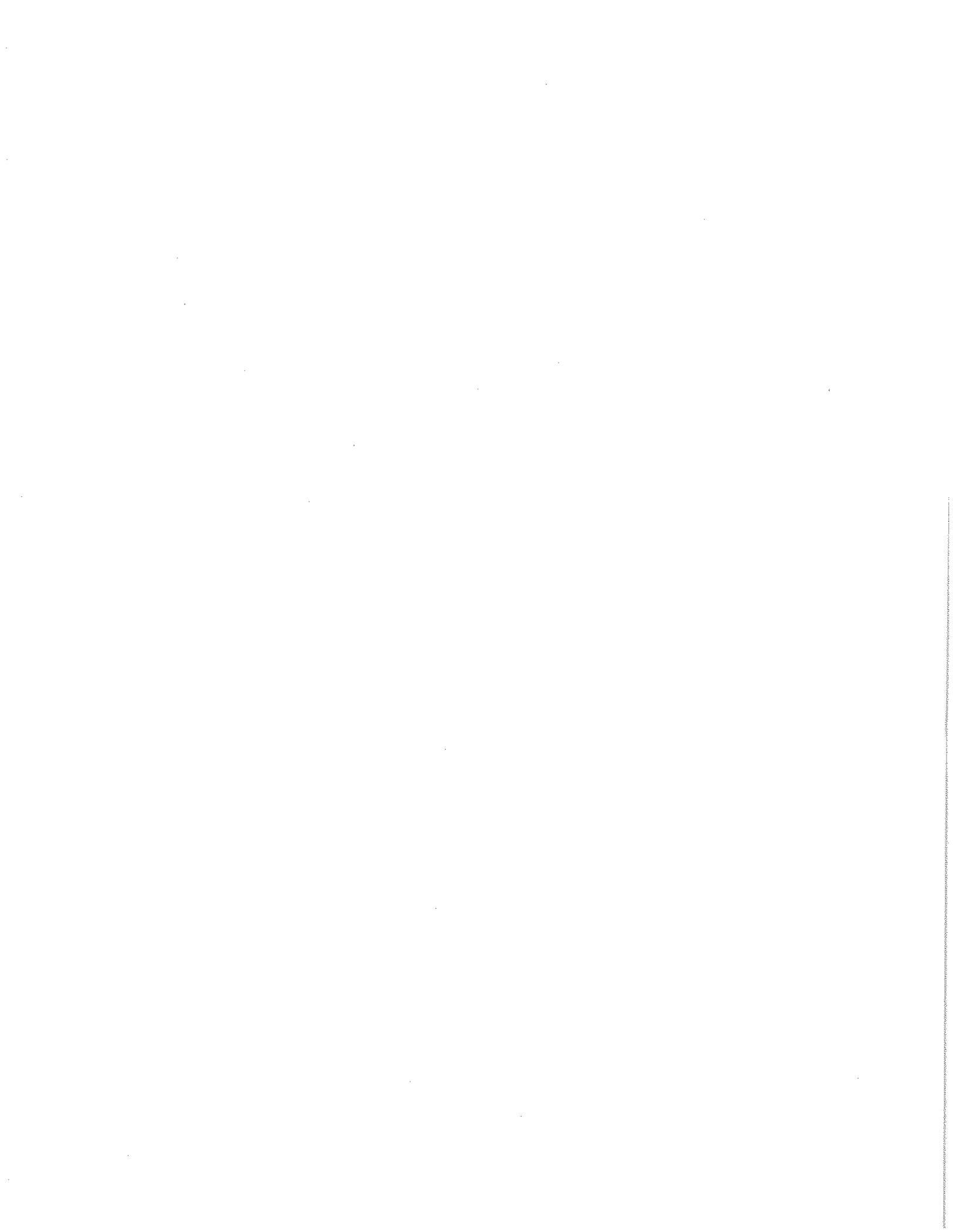
13 Councilperson Simms made a motion to adjourn, seconded by Councilperson Lemasters. Motion  
14 carried unanimously.  
15

16 Meeting adjourned at 6:58 p.m.  
17  
18  
19

20   
21 \_\_\_\_\_  
22 Sondra J. Hewitt, City Clerk

  
\_\_\_\_\_

Dennis Wallace, Vice Mayor



---

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA, AMENDING THE CODE OF THE CITY OF MOUNDSVILLE BY AMENDING SECTION 121 OF SAID CODE TO PROVIDE FOR RULES TO MAKE AVAILABLE, IN ADVANCE, THE DATE, TIME, PLACE AND AGENDA OF ALL REGULARLY SCHEDULED MEETINGS OF THE MOUNDSVILLE CITY COUNCIL TO THE PUBLIC AND NEWS MEDIA, AND FOR OTHER RULES IMPLEMENTING OPEN GOVERNMENTAL MEETINGS.**

---

**THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA  
HEREBY ORDAINS:**

The Code of the City of Moundsville, West Virginia, is hereby amended by amending Section 121.05, as follows:

**Section 121.05 - NOTICE OF MEETINGS, AGENDAS, AND VOTING  
PROCEDURES**

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the members of the Moundsville City Council do hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Moundsville City Council to the public and news media, except in the case of an emergency requiring immediate action, as follows:

(a) Regular Meetings. A notice shall be posted and maintained by the City Clerk at the front door of the Moundsville City Building of the date, time, and place for the holding of regularly scheduled council meetings. In addition a copy of the agenda for each regularly scheduled council meeting shall be posted on the front door of the City Building by the City Clerk not less than three days before such regular meeting is to be held. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

(b) Special Meetings. A notice shall be posted by the City Clerk at the front door of the City Building not less than three days before a specially scheduled council meeting is to be held, stating the date, time, place, and purpose for which such special meeting shall be held. If the special meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

(c) Presentations. All persons that desire to address the Moundsville City Council on items not on the agenda will be allowed to address the City Council under the General Public Hearing section of the agenda, but no official action may be taken on new subject matter until it can be presented as an agenda item at a future meeting.

(d) Voting Procedures. Notwithstanding provisions of the City Charter to the contrary, no votes of City Council shall be cast by written ballot (pursuant to West Virginia Ethics Commission Advisory Opinion 2004-4 to the effect that The West Virginia Open Meetings Act supercedes the City Charter in this regard). Votes of City Council shall be by public roll call voice vote. The Clerk shall tally and announce the results of votes immediately thereafter .

(e) Minutes. Written minutes of all meetings of the City Council shall be prepared and maintained by the City Clerk and shall be available to all members of the public after being approved at the following regularly scheduled meeting, and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and recordation of the vote of each member;
- (5) A draft copy of the minutes, clearly marked, shall be available to the public within a reasonable time after the meeting.

(f) Executive Sessions. If authorized by one of the exceptions in W.Va.Code 29-6A-4, the West Virginia Open Meeting Act, the City Council may hold an executive session during any regular, special or emergency meeting. During the open portion of a meeting, prior to convening an executive session the Mayor or some other person shall identify the authorization for conducting an executive session and shall present it to the members of the public present at the meeting. An executive session shall only be held upon a majority affirmative vote of the members of the City Council and no decision shall be made in executive session.

(g) Media Broadcasts. The City Council shall allow the placement and use of equipment necessary for broadcasting, photographing, filming or recording a council meeting. The equipment shall be placed or used within the meeting room so as to prevent undue interference with the meeting. In the event the City Council determines that the size of the meeting room is not sufficient to accommodate all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording in the meeting room without unduly interfering with the meeting the City Council may require the pooling and sharing of the equipment and personnel operating the equipment among the media.

(h) Agenda. The City Council shall prepare a written agenda for all scheduled meetings and shall distribute it in accordance with subsection "(a)" above. The agenda shall include those items upon which official action is anticipated and those known items to be presented to the City Council for informational purposes.

(i) Notice Period. For purposes of calculating the number of days in any notice period contained in these rules, the day of the meeting is not counted. Additionally, Saturdays, Sundays and legal holidays are excluded.

This ordinance shall be effective from and after the date of its passage.

**PASSED:**

  
**Sondra Hewitt, City Clerk**

April 20, 2004

**First Reading**

May 4, 2004

**Second Reading**

**PUBLISH:** April 23, 2004



WV MUNICIPAL BOND COMMISSION  
8 Capitol Street  
Suite 500, Terminal Building  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: December 21, 2005

ISSUE: City of Moundsville Water Revenue Bonds, Series 2005 A (United States Department of Agriculture)

ADDRESS: P. O. Box E, Moundsville, WV 26041 COUNTY: Marshall

PURPOSE OF ISSUE: New Money: X  
Refunding: X REFUNDS ISSUE(S) DATED: December 21, 2000

ISSUE DATE: December 21, 2005 CLOSING DATE: December 21, 2005

ISSUE AMOUNT: \$ 4,900,000 RATE: N/A

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

1ST DEBT SERVICE AMOUNT: \$ N/A PAYING AGENT: N/A

BOND  
COUNSEL: Steptoe & Johnson PLLC  
Contact Person: Vincent A. Collins, Esquire  
Phone: (304) 598-8161

UNDERWRITERS  
COUNSEL: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

CLOSING BANK: Progressive Bank, N.A.  
Contact Person: Harold Thomas  
Phone: 304.277.1100

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT  
Contact Person: Allen Hendershot  
Position: City Manager  
Phone: 304.845.3394

OTHER: United States Department of Agriculture  
Contact Person: Virginia M. McDonald  
Function: Rural Development Specialist  
Phone: (304) 420-6666

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: Monthly debt service payments will be made by the City directly to the National Finance Office. The Municipal Bond Commission will only hold the Series 2005 A Bonds Reserve Account to be funded over 10 years. Payments into the Series 2005 A Bonds Reserve Account will commence 3 months after completion of construction.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_

WV MUNICIPAL BOND COMMISSION  
8 Capitol Street  
Suite 500, Terminal Building  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: December 21, 2005

ISSUE: City of Moundsville Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority)

ADDRESS: P. O. Box E, Moundsville, WV 26041 COUNTY: Marshall

PURPOSE OF ISSUE: New Money: X  
Refunding: N/A REFUNDS ISSUE(S) DATED: N/A

ISSUE DATE: December 21, 2005 CLOSING DATE: December 21, 2005

ISSUE AMOUNT: \$ 9,745,000 RATE: 5.2 %

1ST DEBT SERVICE DUE: April 1, 2006 1ST PRINCIPAL DUE: October 1, 2008

1ST DEBT SERVICE AMOUNT: \$ 140,761.11 PAYING AGENT: Municipal Bond Commission

BOND  
COUNSEL: Steptoe & Johnson PLLC  
Contact Person: Vincent A. Collins, Esquire  
Phone: (304) 598-8161

UNDERWRITERS  
COUNSEL: Jackson Kelly PLLC  
Contact Person: Samme L. Gee, Esquire  
Phone: (304) 340-1318

CLOSING BANK: Progressive Bank, N.A.  
Contact Person: Harold Thomas  
Phone: 304.277.1100

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT  
Contact Person: Allen Hendershot  
Position: City Manager  
Phone: 304.845.3394

OTHER: West Virginia Water Development Authority  
Contact Person: Daniel B. Yonkosky  
Function: Director  
Phone: (304) 558-3612

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_  
By: \_\_\_\_\_ Wire \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_  
\_\_\_\_\_ Other: \_\_\_\_\_  
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: The Series 2005 B Bonds Reserve Account will be funded over 10 years.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 A (United States Department of Agriculture)  
and Series 2005 B (West Virginia Water Development Authority)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Progressive Bank, N.A., Wheeling, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Moundsville (the "Issuer"), enacted November 1, 2005, and a Supplemental Resolution of the Issuer adopted December 13, 2005 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) and Series 2005 B (West Virginia Water Development Authority), both dated December 21, 2005, in the respective principal amounts of \$4,900,000 and \$9,745,000 (collectively, the "Bonds") and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

PROGRESSIVE BANK, N.A.

By: Harold O. Thomas  
Its: Authorized Officer

12/7/05  
636290.00001



CITY OF MOUNDSVILLE

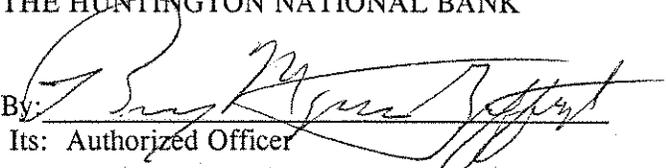
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

ACCEPTANCE OF DUTIES AS REGISTRAR OF SERIES 2005 B BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Moundsville Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority) dated December 21, 2005, in the principal amount of \$9,745,000 ("the Bonds") and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

12/7/05  
636290.00001



CITY OF MOUNDSVILLE

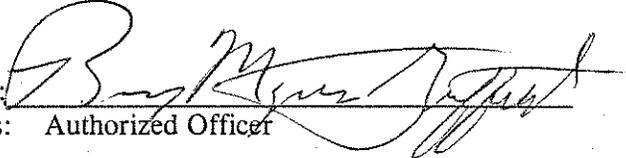
Water Revenue Bonds,  
Series 2005 B (West Virginia Water Development Authority)

CERTIFICATE OF REGISTRATION OF SERIES 2005 B BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned bond issue of the City of Moundsville (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered City of Moundsville Water Revenue Bond, Series 2005 B (West Virginia Water Development Authority), of the Issuer, dated December 21, 2005, in the principal amount of \$9,745,000, numbered BR-1, is registered as to principal and interest 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 HUNTINGTON NATIONAL BANK, as Registrar.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds,  
Series 2005 B (West Virginia Water Development Authority)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 21<sup>st</sup> day of December, 2005, by and between the CITY OF MOUNDSVILLE, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$ 9,745,000 Water Revenue Bonds, Series 2005 B (West Virginia Water Development Authority) dated December 21, 2005, in fully registered form (the "Series 2005 B Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted November 1, 2005, and a Supplemental Resolution of the Issuer duly adopted December 13, 2005 (collectively, the "Bond Legislation");

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 Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Series 2005 B Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation 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 Series 2005 B Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Series 2005 B 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 Series 2005 B 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 the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation 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 Bond Legislation 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:

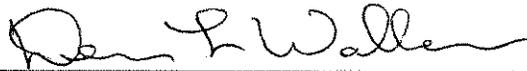
ISSUER: City of Moundsville  
P.O. Box E  
Moundsville, West Virginia 26041  
Attention: Mayor

REGISTRAR: The Huntington National Bank  
One Huntington Square  
Charleston, West Virginia 25301  
Attn: Trust Officer

8. The Registrar is hereby requested and authorized to authenticate, register and deliver the Series 2005 B Bonds in accordance with the Bond Legislation.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF MOUNDSVILLE



\_\_\_\_\_  
Vice Mayor

THE HUNTINGTON NATIONAL BANK

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

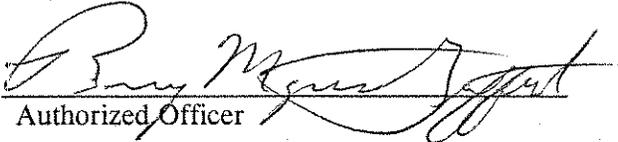
12/15/05  
636290.00001

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF MOUNDSVILLE

\_\_\_\_\_  
Vice Mayor

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

12/15/05  
636290.00001

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group  
P.O. Box 633 - WE3013  
Charleston, West Virginia 25322-0633



STATEMENT OF TRUSTEE'S FEES  
Invoice Date December 20, 2005

City of Moundsville  
Account Number 6089001809

City of Moundsville  
Water Revenue Bonds  
Series 2005 A, Series 2005 B  
C/O John C. Stump  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

\*\*\*\*\*  
FEE CALCULATION FOR December, 2005  
\*\*\*\*\*

TOTAL AMOUNT	\$	500.00
TOTAL DUE	\$	<u>500.00</u>

- \* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT \*
- \* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN \*
- \* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: DEBRA .. \*
- \* .. BOWDEN, PO BOX 633, CHARLESTON, WV 25322-0633 .. \*

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
Barry Morgan Griffith at (304)348-5035



# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616

TELEPHONE 304-558-2981

### PERMIT

(Water)

PROJECT: New 3.0 M.G.D. Water Treatment Plant

PERMIT NO.: 15,201

LOCATION: Moundsville

COUNTY: Marshall

DATE: 3-27-2002

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Moundsville Water Board**  
Post Office Box 480  
Moundsville, West Virginia 26041

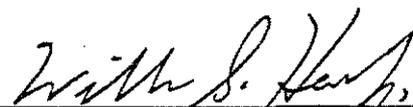
is hereby granted approval to: construct a new 3.0 M.G.D.(expandable to 5.0 M.G.D.) water treatment plant to serve the City of Moundsville and surrounding environs. The raw water source will be the existing Moundsville Water Board well field. There will also be constructed a separate garage/maintenance building at the water treatment plant site. Major components of the new water treatment plant will be located in a new building with all controls, electrical equipment, treatment equipment, chemical feed equipment, basins and appurtenances. Major components will consist of an ozone system with two (2) 250 lb/day ozone generators and two (2) 60,588 gallon ozone contact chambers with three (3) stage diffusion; chemical feed equipment for alum, caustic soda, corrosion inhibitor, hydrofluosilicic acid, calcium thiosulfate and liquid sodium hydrochlorite; two (2) 718 gallon rapid mix units with one (1) mechanical mixer per unit; two (2) 73,244 gallon flocculation basins with one (1) mechanical paddle per basin; two (2) 1,216 SF traveling bridge dual media filters; two (2) 1,300 G.P.M. filter water pumps with provisions for two (2) future pumps; two (2) 1.0 M.G.D. nanofiltration units for softening; two (2) 258,000 gallon baffled clearwell/chlorine contact tanks; three (3) 1,400 G.P.M. finished water pumps with provisions for one (1) future pump; a 960,000 gallon wastewater holding tank for filter backwash and softening wastes with pumping of discharge either to the Ohio River (NPDES Permit required from Department of Environmental Protection) or to the City of Moundsville wastewater system; and all necessary piping, valves, controls, electrical equipment and appurtenances.

**NOTE: This permit is contingent upon: 1) All new water line being disinfected, flushed and bacteriologically tested, prior to use; 2) Maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines, with the water line above the sewer line; and 3) Recommend a separate revenue account be established and funded to provide contracting services for maintenance of the complex ozonation and nanofiltration equipment.**

The Office of Environmental Health Services Wheeling District Office, telephone (304)-238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

  
William S. Herold, Jr., P.E. Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:sec

pc: Gwin, Dobson & Foreman, Inc.  
James W. Ellars, P.E., PSC-Engineering Division  
Amy Swann, PSC  
Marshall County Health Department  
OEHS-EED Wheeling District Office

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL and WASHINGTON STREETS, 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-558-2981

### PERMIT

(Water)  
 PROJECT: New 3.0 M.G.D. Water Treatment Plant PERMIT NO.: 16,566  
 LOCATION: Moundsville COUNTY: Marshall DATE: 6-1-2005

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Moundsville Water Board  
 Post Office Box 480  
 Moundsville, West Virginia 26041**

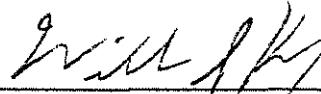
is hereby granted approval to: amend and modify Permit No. 15,201, issued March 27, 2002, for the new 3.0 M.G.D. (expandable to 5.0 M.G.D.) water treatment plant to serve the City of Moundsville and surrounding environs. Major modifications will be the elimination of the proposed separate garage/maintenance building at the water treatment plant site; construction of the proposed 960,000 gallon wastewater holding tank for filter backwash and softening wastes into two (2) phases: an initial 300,000 gallon tank and a future 656,000 gallon tank (if necessary); and the extension of the permit to June 1, 2007.

**NOTE: This permit is contingent upon: 1) All unchanged conditions and requirements of Permit No. 15,201 remaining in effect; 2) All new water line being disinfected, flushed and bacteriologically tested, prior to use; 3) Maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines, with the water line above the sewer line; and 4) Recommend a separate revenue account be established and funded to provide contracting services for maintenance of the complex ozonation and nanofiltration equipment.**

The Office of Environmental Health Services Wheeling District Office, telephone (304)-238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR



William S. Herold, Jr., P.E., Assistant Manager  
 Infrastructure and Capacity Development  
 Environmental Engineering Division

WSH:snr

pc: Gwin, Dobson & Foreman, Inc.  
 James W. Ellars, P.E., PSC-Engineering Division  
 Amy Swann, PSC  
 Marshall County Health Department  
 OEHS-EED Wheeling District Office



**MOUNDSVILLE WATER BOARD  
TREATMENT PLANT PROJECT  
Marshall County**

**MEMORANDUM OF UNDERSTANDING**

between

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF LAND RESTORATION  
OFFICE OF ABANDONED MINE LANDS & RECLAMATION**

and

**CITY OF MOUNDSVILLE  
(MOUNDSVILLE WATER BOARD)**

WHEREAS, the West Virginia Department of Environmental Protection (WVDEP), Division of Land Restoration (DLS), Office of Abandoned Mine Lands and Reclamation (AML) is charged with the reclamation of lands and water affected by the adverse affects of coal mining activities which took place prior to August 3, 1977, pursuant to Title IV of Public Law 95-87, as amended, and West Virginia Code § 22-3-1 et seq.; and

WHEREAS, it has been determined that the degradation of the water supply in the City of Moundsville in Marshall County, West Virginia has been caused in part by coal mining activities which took place prior to August 3, 1977; and

WHEREAS, WVDEP is desirous of abating said effects by partially funding a water treatment plant to serve approximately 4,680 water customers in the affected area; and

WHEREAS, City of Moundsville hereafter referred to as Moundsville Water Board (MWB) operates and maintains a public water supply system and agrees to construct a water treatment plant; and

WHEREAS, WVDEP and MWB believe that providing for the construction and operation of a water treatment system within Moundsville furthers the statutory purposes for which WVDEP and MWB were created; and

WHEREAS, MWB has agreed to construct, own, operate and maintain and replace said water treatment facilities; and

WHEREAS, WVDEP and MWB have funds available to assist in the construction, operation and maintenance of such water treatment facilities; and

WHEREAS, WVDEP and MWB are willing to cooperate in completing a project entitled "Moundsville Water Board Treatment Plant Project" which will bring treated water service to customers of the MWB;

NOW, THEREFORE WVDEP and MWB enter into this Memorandum of Understanding (MOU) this 13<sup>th</sup> day of December, 2005, setting forth the terms and conditions under which such project shall be accomplished, which it is agreed shall be as follows:

**1. PROJECT LOCATION**

The water treatment plant will be located inside the city limits of Moundsville, Marshall County.- A copy of the map of the eligible project area is attached as Attachment "A".

**2. NEED FOR THE PROJECT**

The source of water for the MWB is groundwater from wells, the quality of which is poor due to excessive manganese and hardness. Coal seams in the area have been extensively surface and deep mined by mining that is eligible for WVDEP Abandoned Mine Land Reclamation reclamation activity. There has been an observed and measured adverse affect on the quality and quantity of groundwater that is consistent with coal mining. The water supply for the MWB violates secondary health criteria.

On March 7, 2002, CTL Engineering of WV, Inc., Morgantown, West Virginia completed an extensive study and report for WVDEP-AML to assess the pre-law mining impacts of the groundwater resources, determine the most cost-effective means of correcting degradations to the quality of the Moundsville water supply caused by pre-1977 mining, and establish the eligibility for WVDEP/AML funding.

**3. SCOPE OF WORK**

1. The work will generally consist of the construction of a water treatment plant.
2. The plans and specifications for the water treatment plant are incorporated by reference into this MOU.

#### **4. TIME FOR PERFORMANCE**

This MOU may be extended upon prior written approval of all parties to the MOU or may be terminated prior to commencement of construction by any party upon thirty (30) days prior written notice to the other parties. Assuming the MOU is not terminated prior to commencement of construction, project work shall be completed and the MOU shall be fully performed within two years following the MOU's effective date.

#### **5. OWNERSHIP AND MAINTENANCE**

Ownership and maintenance of the subject Moundsville Water Treatment Project, constructed pursuant to this Memorandum of Understanding (MOU), is the sole responsibility of MWB. MWB shall operate and maintain said facilities in accordance with Water Rules and Tariffs filed with the Public Service Commission of West Virginia by MWB.

#### **6. PROGRESS SCHEDULE**

1. Within 30 days after the date of execution this MOU, MWB shall prepare and submit to WVDEP a schedule by which it plans to project tasks. Such schedule shall provide for expeditious and practicable completion dates for the various stages of construction which are part of and contemplated by this MOU, including the anticipated receipt date of any necessary permits, licenses, or approvals. Once submitted, this schedule may be revised only with the express written consent of WVDEP.
2. The schedule must be designed so that work on this project may be completed within two (2) years after the effective date of this MOU. If MWB does not complete tasks within the time deadlines it submits, WVDEP may declare MWB to be in breach of this MOU and may proceed accordingly.

#### **7. LIABILITY INSURANCE AND LIABILITY**

1. MWB or its contractor(s) shall maintain Contractor's Public Liability Insurance and Comprehensive Vehicle Liability Insurance liability insurance coverage throughout the life of the project in an amount not less than \$1,000,000 for bodily injury and property damage for each occurrence and not less than \$1,000,000 aggregate.
2. The insurance provider must be a company (or companies) licensed to do business in West Virginia at the time the policy is issued.
3. A statement to be affixed to the certificate of insurance affirming that the insurer will promptly notify WVDEP of any substantive change in policy including cancellations, termination, or failure to renew.

4. In the event MWB's liability insurer becomes insolvent, is placed in the hands of a receiver, or has its right to do business in West Virginia revoked, MWB shall fully replace the insurance offered by that insurer within 30 days following the insurer's insolvency, placement into receivership, or revocation of license.

5. MWB shall take all reasonable precautions for the safety of, and shall provide all reasonable protection, preventing damage, injury, or loss to: (a) all employees on the work, and all other persons who may be affected by project activities and (b) property adjacent to the project area, including, but not limited to, paving, roadways, structures, utilities, and permanent property boundaries, monuments or markers not designated for removal, or relocation, or replacement in the course of construction.

6. MWB shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority that bear on the safety of persons or property or their protection from damage, injury, or loss. In particular, MWB shall obey all Occupational Safety and Health Administration (OSHA) requirements and operate in accordance with standard specifications for public convenience and safety.

7. WVDEP shall not be responsible for MWB's operations. MWB shall be liable to WVDEP for any infractions, committed by MWB in violation of the requirements and provisions of this MOU which cause WVDEP to receive a citation and/or fine from any local, State or Federal agency. Costs that WVDEP has to bear as a result of having to defend against such citations and/or fines shall be borne by MWB to the satisfaction of WVDEP. Nothing herein, however, shall prevent MWB from challenging in any appropriate forum the validity of any such citation or fine that may be issued.

8. MWB shall be responsible to WVDEP for the acts and omissions of its employees, agents, contractors, and their agents or employees, and any other persons performing work under this MOU.

9. MWB shall either: (1) require each of its contractors to procure and to maintain, during the life of this MOU Public Liability and Property Damage Insurance of the type and in the same amounts as specified in this MOU, or (2) insure the activities of its contractors in its own insurance policy.

## **8. PERFORMANCE AND LABOR AND MATERIALS BOND**

1. Prior to performing any work under this MOU, MWB shall deliver to WVDEP a satisfactory bond in the amount equivalent to the contractor's bid for the project. Such bond shall be in the form of a surety, letter of credit, cash, CD or other form of acceptable Bond Instrument as specified in West Virginia Code of State Rules § 38-2-11.3. If from a surety, the bond shall be from a surety acceptable to WVDEP. The bond shall include a Performance Bond and Labor and Materials Payment Bond and shall ensure MWB's faithful fulfillment of all reclamation work specified herein. The bond shall save and hold harmless WVDEP from all liens and claims arising out of the work. MWB or its Contractor shall pay for the bond.

2. Attorneys-in-Fact who execute a surety bond satisfying the requirements of this Section must provide with each surety bond a certified and properly executed Power of Attorney.

3. In the event that the surety on any letter of credit or bond given by MWB becomes insolvent, is placed in the hands of a receiver, or has its right to do business in West Virginia revoked, MWB shall fully replace the bond issued by that surety within 30 days following the surety's insolvency, placement into receivership, or the revocation of his license to do business in West Virginia or any other state. The failure of MWB to replace a bond it holds with an incapacitated surety company within this 30-day period shall constitute a breach of this MOU.

4. The bond shall be effective for the time it takes to successfully complete this MOU plus one year following that time period. For MWB's bond to be released, WVDEP must give MWB a written, final release of its bonding obligations which WVDEP will promptly provide upon MWB's fulfillment of the one-year warranty.

## **9. WORKERS COMPENSATION INSURANCE**

1. All employees of MWB and MWB's contractor(s) engaged in the performance of this MOU shall be covered by West Virginia's Workers Compensation Insurance.

2. Appropriate certificates shall be provided to WVDEP by MWB and its contractors showing those entities' compliance with the Workers Compensation laws of West Virginia.

## **10. PROOF OF CARRIAGE OF INSURANCE**

Before work commences on the project, MWB shall provide WVDEP with certificates issued by the insurance company or companies issuing insurance policies that

are required by this MOU. The certificates shall show the type, amounts, class of operations covered, effective dates, and dates of expiration of such policies. Such certificates shall provide that written notice shall be given to WVDEP prior to expiration, cancellation, or modification of any such policy, and such certificates shall contain substantially the following representation: "The insurance covered by this certificate will not be cancelled, or materially modified or altered, except after thirty (30) days written notice of such cancellation or modification has been verified as received by the West Virginia Department of Environmental Protection (or its successor in interest.)".

## **11. CONTRACTING**

1. MWB shall be the contracting authority and shall follow all state and federal laws regarding such contracting. MWB agrees to be responsible for design of the project and in contract bidding and awarding of the project. It is understood and agreed that contract bidding shall not be commenced until WVDEP notifies MWB to initiate such bidding.

2. All parties to this MOU understand that MWB and WVDEP are required to pay prevailing wage rates as established by the Davis Bacon Wage Act to contractors whom MWB hire to complete MOU related work.

## **12. NECESSARY PERMITS AND APPROVALS**

1. MWB agree to pay for and obtain the Certificate of Convenience and Necessity for the project through the Public Service Commission of West Virginia, and all other necessary permits, licenses, and other such approvals required by law that it may need to perform this MOU except those permits, licenses, and other such approvals which the project specifications require MWB's contractor to obtain. MWB further agrees that all permits, authorizations and other necessary approvals will be obtained to satisfy federal laws and regulations and that it shall furnish copies of the same to WVDEP.

2. MWB is also responsible for providing all notice that may need to be made to any appropriate State or Federal Agency.

3. MWB shall comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, the maintaining of passageways, guard fences or other protective devices. All applicable Federal and State laws and regulations, municipal ordinances, and the rules and regulations of all public authorities having jurisdiction over the project shall apply to the MOU throughout and are incorporated herein by reference.

4. This project is expressly subject to the approval of the Public Service Commission of West Virginia.

### 13. RIGHTS OF ENTRY

In order to access the permit area, the MWB may need to obtain one or more rights of entry, temporary easements, or permanent easements from appropriate landowners. MWB is responsible for obtaining, paying for, and, if necessary, recording such agreements in accordance with procedures established by federal, state and local laws.

### 14. FUNDING AND PAYMENT

1. WVDEP agrees to pay the MWB eligible construction costs, on the condition that all other parts of this MOU are complied with, based upon a total eligible construction cost of \$15,788,000.00. WVDEP shall pay \$1,400,000.00 actual contribution toward said eligible construction costs associated with this project. Attachment "B" explains WVDEP's commitment to the project. Attachment "B" references splitting the funding between the grant years of 2003 and 2004, in \$700,000.00 increments. However, due to the delays in bidding of the project, the funding of the \$1,400,000.00 will come from WVDEP's 2004 and 2005 grants.

2. MWB agrees to pay the remainder of the costs of the eligible construction costs, based upon a total eligible construction cost of \$15,788,000.00. The MWB shall pay \$14,388,000.00 as its actual contribution toward said eligible construction costs associated with this project

3. MWB agrees to acquire and pay for all temporary construction easements, rights of way, and permanent easements associated with project, if any, in accordance with procedures established by federal, state and local laws. MWB or Contractor will provide a copy of the terms of all rights of entry and easements, or a statement from MWB's engineer that no such easements or rights-of-way are necessary, to WVDEP prior to Contractor's commencement of project work.

4. Costs that WVDEP assumes as a result of having to defend against citations and/or fines issued against MWB or Contractor shall be borne by the responsible party to the satisfaction of WVDEP. Nothing herein, however, shall prevent either MWB or Contractor from challenging in any appropriate forum the validity of any such citation or fine that may be issued against it.

5. Contractor shall submit invoices to MWB. Once the MWB is satisfied that the invoice is correct, MWB will invoice the WVDEP based upon the portion of the work actually completed on the project multiplied by WVDEP's \$1,400,000.00 contribution. Once WVDEP has reviewed and approved the invoice and has the proper supporting documentation, WVDEP will pay MWB based off of the awarded Purchase Order to MWB for the AML eligible area (See Attachment "C" which includes: (1) Project Location Map, (2) Contractor's Bid with Attachments, (3) Bid Tabulation and Engineer's Recommendations and (4) Addendum's No. 1 and 2 to the Contract Documents.) MWB

will then pay the Contractor. These Contractor invoices will be for eligible construction costs incurred and materials stored on site (as per Section 19, Paragraphs 1,2,3 and 4). Payment requests shall be made on forms approved by WVDEP. Invoices provided shall include performance reports as specified by WVDEP. Once WVDEP has contributed \$1,400,000 to the MWB for the project, MWB shall discontinue forwarding contractor invoices to WVDEP.

#### **15. ADDITIONAL RESPONSIBILITIES**

1. MWB shall at all time supply sufficiently skilled labor and the amount of equipment and labor necessary to adequately fulfill the requirements of this MOU and the plans and specifications associated with and incorporated into this MOU.
2. MWB shall at all times provide for the expeditious and commercially practicable execution of the MOU to the MOU's completion.
3. Except as noted elsewhere in the MOU, MWB shall pay all charges, fees, and taxes, and procure all general notices necessary and incidental to the due and lawful prosecution of the work.

#### **16. INITIAL EXAMINATION OF PREMISES**

By executing this MOU, MWB represents that it has visited the site, familiarized itself with the local conditions under which this MOU work is to be performed, and has correlated its observations with the various documents associated with this MOU. No allowance will subsequently be made by reason of neglect or error on the part of MWB for failing to inform itself of the requirements and conditions contained herein.

#### **17. CONSTRUCTION WARRANTY PERIOD**

1. MWB shall warrant at its sole cost and expense all aspects of the reclamation project, including materials and workmanship, for a period of twelve (12) months following completion of the MOU. During this one-year warranty period, MWB shall maintain the project to the conditions existing at the date of the acceptance of the work.
2. Any defect in material or workmanship shall be promptly repaired upon receipt of written notice from WVDEP, provided that MWB shall have the right to challenge in good faith the validity of any alleged defect in any appropriate forum. Defects appearing within the warranty period, or before, shall be remedied at the expense of MWB, not WVDEP.
3. WVDEP's final acceptance of MWB's performance shall not relieve MWB of responsibility for negligence or faulty materials.

4. The one year warranty period referred to above shall not be construed as being an extension of the two year performance time allotted for work under the MOU.

#### 18. CONTRACTS AND CONTRACTORS

1. Any person, firm or other party to whom MWB proposes to award a contract pursuant to this MOU must be acceptable to, and approved by, WVDEP prior to when that person, firm, or other party begins work on this project and pursuant to this MOU.

2. Nothing contained in contract documents between MWB and its contractor(s) shall create any contractual relationship between that contractor and WVDEP.

#### 19. INSPECTION OF PROJECT, SUPERVISION, AND CONSTRUCTION PROCEDURES

1. WVDEP shall have the right to inspect the project area at any time WVDEP deems necessary, with or without giving prior notice to MWB.

2. MWB agrees to provide inspection expertise on and off the project area as necessary to maintain sufficient surveillance of the construction operations. MWB shall supervise and direct all project work performed under the MOU, using its best skill and attention. MWB shall be responsible for all construction means, methods, techniques, and procedures, and coordinating all portions of the project work. MWB shall be responsible for monitoring quantities, reviewing submitted construction invoices, as well as overseeing the initiation and processing of change orders (if accepted by WVDEP) in accordance with established WVDEP procedures.

3. WVDEP and MWB representatives shall work together to ensure that the project is constructed according to the design plans and specifications approved by WVDEP, and in accordance with the costs agreed to by the contractor awarded the project. MWB shall have the authority to review and approve the implementation of minor field changes in the work to the extent that such field changes do not constitute a change in the scope of work construction costs or the time for performance allowed under this MOU. Before implementation of changes in the project's scope of work, MWB must obtain from WVDEP its approval of such changes.

4. Copies of all Contract Documents, Performance Reports, Shop Drawings, Plans and Specifications as well as other such construction related documents shall be provided in a timely fashion to WVDEP upon WVDEP's request. Performance Reports shall be electronic in either Microsoft Word or Excel format. These reports should be received by the Office of AML&R monthly and should show detail of quantities used and work performed. Requests for construction cost reimbursement shall be on forms approved by WVDEP.

**20. WRITTEN AUTHORIZATION TO PROCEED**

MWB shall not commence project activities until after it receives from WVDEP a written Notice to Proceed.

**21. CONTRACTUAL NOTICE**

Unless otherwise specifically noted in this agreement, any notice required or necessary to be made to WVDEP shall be by certified mail to the following address:

Assistant Director, Office of Abandoned Mine Lands  
Division of Lands Restoration  
West Virginia WV Department of Environmental Protection  
601 57<sup>th</sup> Street – Box 20  
Charleston, WV 25304

**22. WATER REPLACEMENT**

MWB agrees to restore and replace any water rights that are damaged or destroyed by the project on activities which it performs pursuant to this MOU; however MWB shall have the right to challenge the validity of any claim of water loss, damage, or destruction that may be made by WVDEP or any third party.

**23. STORAGE OF MATERIALS**

1. All flammable, toxic, and explosive materials shall be safely stored in conformity with applicable safety requirements of State and Federal regulations and safety standards of the National Fire Protection Association.

2. If MWB is unable to complete MOU performance, then all materials stored on site shall become the property of WVDEP and shall be used for the completion of the MOU.

**24. DAMAGES TO EXISTING WORK, FACILITIES, POWER LINES, ETC.**

1. All masonry damage, glass breakage, and other damage caused to existing buildings and appurtenances by MWB or by its Contractors in their performance of work relating to this MOU shall be properly replaced or repaired at the option of WVDEP, without cost to WVDEP.

2. All utilities and drainage lines on or in the vicinity of the site shall be located and marked for position by MWB and shall remain adequately protected throughout the duration of the work. MWB shall be responsible for the protection and maintenance of these lines at all times. If during the duration of the MOU or the warranty period thereafter any existing overhead or underground lines are damaged by construction equipment or

subjected to damage caused by the proximity of such equipment, MWB shall bear the expense of replacing or repairing the damaged lines.

## **25. ACCESS TO AND MAINTENANCE OF SITE**

1. MWB shall erect such temporary fences or guards as may be necessary to keep unauthorized persons away from the project site and the project work.
2. MWB shall be responsible for dealing with, at no extra cost to WVDEP, the contours and the character of the earth, rock, water, and other items that may be encountered during project work.
3. Ground water or impounded water may be encountered at various locations within the proposed work areas. All water that emanates from the project site shall meet effluent limits and shall not violate state water quality standards. If necessary, MWB shall install and maintain treatment systems, at its own cost, that ensure that all water emanating from the site meets state water quality standards. It is MWB's responsibility to ensure that water quality standards are met through the terms of this MOU, although nothing in this MOU shall be deemed to make MWB responsible for or to treat beyond the term of this MOU.
4. MWB shall be responsible for the operation and maintenance of any required diversion or pumping facilities for removing ground water or impounded water from work areas during progress of the work under this MOU.

## **26. MAINTENANCE OF CONSTRUCTION SITE**

1. MWB at all times shall keep the construction site free of accumulated waste materials and rubbish caused by its operations. Periodically during the progress of the work, and also when directed to do so by WVDEP, MWB shall remove, or cause to be removed, accumulated waste materials, rubbish, and debris. MWB shall leave the site in good order upon its completion of the project.
2. MWB shall provide and pay for adequate temporary toilet facilities for personnel during the project construction period. Toilets shall be of types approved by WVDEP and the State Department of Health and shall be situated only in approved locations. MWB shall be responsible for operation and sanitary maintenance of the temporary toilets and shall have them removed upon project completion.

## **27. UNCOVERING AND CORRECTION OF WORK**

MWB shall promptly correct all work rejected by WVDEP as defective or as failing to conform to the MOU's plans and specifications whether observed before or during the warranty period and whether or not that work has been installed or completed.

MWB shall bear all costs of correcting such rejected work. All such defective or non-conforming work shall be removed from the site if necessary and MWB shall, at its sole expense, correct the unacceptable work in a fashion that allows for the terms of the MOU to be fully complied with.

## **28. ASSIGNMENT OF CONTRACT**

MWB shall not assign or transfer this MOU or sublet it as a whole without having first obtained the written consent of WVDEP to do so.

## **29. SUPERINTENDENTS, COORDINATION, TEMPORARY CESSATION OF WORK**

1. MWB shall employ and keep a competent English-speaking superintendent and assistants on the project site at all times. These personnel shall give efficient supervision to the work using their best skill and attention and shall, collectively, have knowledge and control of all construction trades necessary for the completion of this project, understanding that the parties contemplate that there will be no subsurface work that needs to be done on this project. MWB shall insure that each of its Contractors provides a competent person for each construction trade required on the project.

2. MWB and each of its contractors shall coordinate project work and shall cooperate with and assist each other on the job for the successful execution of the work.

3. WVDEP may call to the attention of MWB MWB's failure to comply with the terms of the MOU, including the project's plans and specifications that have been incorporated into the MOU by reference. By written order WVDEP may suspend overall project work until MWB comes into full compliance with the terms of the MOU. No suspension of work occurring pursuant to this subsection shall operate to extend the time for MOU performance allowed to MWB under the MOU.

## **30. CHOICE OF LAWS**

This MOU shall be interpreted under the laws of the State of West Virginia. Each person executing this agreement on behalf of the respective parties represents that he has the authority to so bind his principal. If any disputes arise concerning this MOU, this MOU shall be deemed to have been entered into in Kanawha County, West Virginia. Legal disputes concerning the MOU shall be brought in the circuit court of Kanawha County.

## **31. BREACH OF MOU**

MWB has full responsibility for ensuring its compliance and its contractors' compliance with the terms of this MOU and any projects and specifications that may need

to be promulgated to implement this MOU. Should MWB and/or its contractors fail to comply with the terms of this MOU and any properly approved modifications to the terms of this MOU, WVDEP shall provide MWB with a written notice of default and should Contractor then fail to remedy the default within 30 days, WVDEP may declare MWB in breach of this MOU.

**32. TERMINATION OF MOU BY WVDEP, CLAIM ON BOND, AND OTHER LEGAL REMEDIES ABSENT MWB'S FULL PERFORMANCE OF THE MOU**

1. Upon MWB's (including its Contractors') breach of this MOU, WVDEP may without delay declare this MOU to be terminated, declare bond forfeiture, and proceed to collect the appropriate bond posted by MWB. These actions shall not operate to prejudice any other right or remedy WVDEP may have against MWB or its Contractors. WVDEP may also, as a third party beneficiary of contracts entered into between MWB and its contractors, seek appropriate remedies from MWB, contractors, or other third parties.

2. This MOU may be terminated in whole or in part in writing by WVDEP without prejudice to any other right or remedy it may have in the event that MWB is declared bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of MWB's insolvency.

3. Upon receipt of notice of whole or partial MOU termination, MWB shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and shall deliver or otherwise make available to WVDEP all data, drawings, specifications, reports, estimates, summaries, and other such information and materials as may have been accumulated by MWB in performing this MOU regardless of whether the records containing such information are complete or in progress.

**33. FINAL COMPLETION AND TERMINATION OF MOU UPON MWB'S SUCCESSFUL COMPLETION OF THE MOU**

1. No later than two years following the effective date of this MOU, or the end of the initial performance period if extended beyond two years as provided for herein, WVDEP shall inspect the site to determine if MWB has completed all tasks contemplated by this MOU. If MWB has not completed all tasks contemplated by this MOU, WVDEP shall provide MWB with written notice of any deficiency or defect in material or workmanship and upon failure by MWB to repair said deficiency or defect within thirty (30) days of the date upon which WVDEP notifies MWB of the deficiency or defect in materials or workmanship, WVDEP may declare MWB to be in breach of this MOU and proceed immediately with MOU termination and bond forfeiture.

2. Should MWB allege that it has completed work under this MOU prior to the end of the initial performance period, MWB shall provide written notice to WVDEP and WVDEP

shall promptly inspect the reclamation project. If WVDEP finds that MWB has not completed all tasks contemplated by the MOU, WVDEP shall provide MWB with written notice of any deficiency or defect in material or workmanship and MWB shall promptly repair said deficiency or defect prior to the expiration of the initial performance period or by no later than 60 days after being notified of the deficiency or defect, whichever event occurs last.

3. WVDEP agrees that it shall cause any inspection required under this Section of the MOU to be promptly undertaken and shall within thirty (30) days of the date of the required inspection provide MWB with either certification of completion or written notice of any deficiency or defect.

4. Upon WVDEP's certification that MWB has completed all tasks contemplated by this MOU, MWB shall proceed to monitor, maintain, and warrant the site for an additional one-year time period from the date of WVDEP's certification.

5. If MWB successfully and appropriately monitors, maintains, and warrants the site for 12 months following the date upon which MWB has completed its duties under this MOU, then WVDEP shall inspect the project at that time to determine if MWB has met all of its MOU obligations and if such obligations have been met, WVDEP shall release MWB from the MOU.

6. If MWB fails to properly monitor, maintain, and warrant the site for the aforementioned 12 month period, WVDEP may declare MWB to be in breach of the MOU and may pursue remedies as outlined above.

7. If MWB has met all of its contractual obligations established under this MOU, then WVDEP shall promptly grant MWB a final, written release from this MOU and shall also terminate the MOU in a fashion that does not prejudice MWB. Upon MOU termination in this fashion, MWB shall be released from its bonding obligations and MWB's bond(s) shall be returned to it.

8. All certificates of testing, quality, compliance, and performance, as required, requested, and/or specified, shall be delivered to WVDEP upon delivery or completion of the work covered by the certificates.

9. The acceptance of WVDEP's notice that MWB has completed its work under this MOU shall constitute a waiver of all claims by MWB against WVDEP.

#### **34. INDEMNIFICATION AND DEFENSE**

1. If a third party sues or makes a claim against WVDEP for injuries resulting from the project activities or omissions of MWB or its contractors, the party whose alleged or actual activities precipitated the lawsuit shall indemnify and hold harmless WVDEP from

such claim or lawsuit and shall pay all costs and expenses, including attorney's fees, incurred by WVDEP as result of the suit. If WVDEP so requests at the time of the lawsuit, that same responsible party shall also assume the defense of any action brought by a third party against WVDEP to recover damages for such project activities or omissions.

2. Notwithstanding the other provisions of this Section, MWB and it's contractors shall not be liable for damages caused to WVDEP's employees solely by those employees', or WVDEP's, negligence.

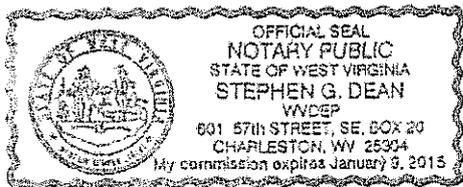
(signatures and witnesses on following pages)

WITNESS THE FOLLOWING SIGNATURES:

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Charles J. Miller

Its: Assistant Director



STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO WIT

I, the undersigned Notary Public do certify that Charles J. Miller for the West Virginia Department of Environmental Protection, an official agency of the State of West Virginia, has this day in my said county, before me, acknowledged the said writing to be the act and deed of said agency.

Given under my hand this the 13 day of DEC, 2005.

My commission expires: JAN 9, 2015

Stephen G. Dean  
Notary Public

MOUNDSVILLE WATER BOARD -- MARSHALL COUNTY, WEST VIRGINIA

By: Allen Hendershot

Its: City Manager

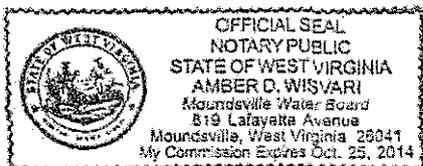
STATE OF WEST VIRGINIA,  
COUNTY OF MARSHALL, TO WIT

I, the undersigned Notary Public do certify that Allen Hendershot, for the Moundsville Water Board has this day before me, acknowledged the said writing to be the act and deed of said body.

Given under my hand this the 10th day of November, 2005.

My commission expires: OCT. 25, 2014

Amber D. Wisvari  
Notary Public







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

REC'D AUG 27 2004

CERTIFIED MAIL

AUG 25 2004

Mr. Allen Hendershot  
City Manager  
City of Moundsville  
P.O. Box 480  
819 Lafayette Avenue  
Moundsville, WV 26041

Re: XP-973071-01-0

Dear Mr. Hendershot:

The Agency has approved an assistance application and award of \$2,168,300 in support of the project entitled City of Moundsville Construction of a New Water Plant.

This award is made subject to the terms and conditions of the enclosed assistance agreement. Three originals of the assistance agreement are enclosed. Please sign all of them. Return one to Ms. Kathleen M. Blinebury, Grants Management Officer, Grants and Audit Management Branch (3PM70), within twenty-one days of your receipt. The West Virginia Bureau for Public Health is assisting with the management of this project. Mail one to Mr. Walter M. Ivey, P.E., Manager, Bureau for Public Health, Infrastructure and Capacity Development, 815 Quarrier Street, Suite 418, Charleston, WV 25301-2616 and retain one for your organization.

A Region III website is available to provide you with a better understanding of the requirements associated with your assistance agreement and with information that will help you to manage your grant. The website can be found at: [www.epa.gov/region3/grants/index.htm](http://www.epa.gov/region3/grants/index.htm).

Your contact at EPA is Mr. Bruce A. Smith. You can reach Mr. Smith at 215-814-5770.

Sincerely,

*Wendy Bayler*  
James W. Newsom  
Assistant Regional Administrator  
for Policy and Management

Enclosures

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	ASSISTANCE ID NO.			DATE OF AWARD AUG 18 2004 MJ	
		PRG	DOC ID	AMEND#		
		XP - 97307101 - 0			MAILING DATE AUG 25 2004	
		TYPE OF ACTION New			ACH#	
PAYMENT METHOD: Reimbursement						
RECIPIENT TYPE: Municipal			Send Payment Request to: West Virginia Department of Health and Human Resources			
RECIPIENT: City of Moundsville PO Box 480 Moundsville, WV 26041 EIN: 55-0738193			PAYEE: City of Moundsville PO Box 480 Moundsville, WV 26041			
PROJECT MANAGER Thomas L. Dobbs CPA PO Box 480 Moundsville, WV 26041 E-Mail: Phone: 304-845-7914		EPA PROJECT OFFICER Bruce A Smith 1650 Arch Street, 3WP21 Philadelphia, PA 19103-2029 E-Mail: Smith.BruceA@epamail.epa.gov Phone: 215-814-5770		EPA GRANT SPECIALIST Jill Garcia Grants and Audit Management Branch, 3PM70 E-Mail: Garcia.Jill@epamail.epa.gov Phone: 215-814-5402		
PROJECT TITLE AND DESCRIPTION Special Appropriations Project  This award is for the City of Moundsville for the construction of a new 3.0 million gallon per day direct filtration water treatment plant utilizing the preozonation process and softening.						
BUDGET PERIOD 09/15/2004 - 06/01/2006		PROJECT PERIOD 09/15/2004 - 06/01/2006		TOTAL BUDGET PERIOD COST \$3,942,364.00	TOTAL PROJECT PERIOD COST \$3,942,364.00	
NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, 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, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>City of Moundsville</u> for <u>59.00</u> % of all approved costs incurred up to and not exceeding <u>\$2,169,300</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>03/24/2004</u> included herein by reference.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS US EPA Region 3, 3PM70 1650 Arch Street Philadelphia, PA 19103-2029			ORGANIZATION / ADDRESS U.S. EPA, Region 3 Water Protection Division 3WP00 1650 Arch Street Philadelphia, PA 19103-2029			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL <i>Wendy Burtel for</i>		TYPED NAME AND TITLE James W. Newsom, ARA for Policy and Management		DATE AUG 18 2004		
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 1, Subchapter B and of the provisions of this agreement (and all attachments), 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 <i>Allen Hendershot</i>		TYPED NAME AND TITLE Allen Hendershot, City Manager		DATE 8/30/04		

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 2,168,300	\$ 2,168,300
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 1,774,064	\$ 1,774,064
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 3,942,364	\$ 3,942,364

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.606 - Surveys - Studies - Investigations and Special Purpose Grants	Consolidated Appropriations Resolution 2003 (PL 108-7)	40 CFR PART 31

Fiscal									
Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	LL0151	2004	E4C	0300QSB	201B51E	41.83			2,168,300
									2,168,300

<b>Approved Budget</b>	
	<b>Approved Allowable Budget Period Cost</b>
1. Administration Expense	\$0
2. Preliminary Expense	\$0
3. Land Structure, Right Of Way	\$0
4. Architectural Engineering Basic Fees	\$0
5. Other Architectural Engineering Fees	\$0
6. Project Inspection Fees	\$0
7. Land Development	\$0
8. Relocation Expenses	\$0
9. Relocation Payments to Individuals & Bus.	\$0
10. Demolition and Removal	\$0
11. Construction and Project Improvement	\$3,942,364
12. Equipment	\$0
13. Miscellaneous	\$0
14. Total (Lines 1 thru 13)	\$3,942,364
15. Estimate Income	\$0
16. Net Project Amount (Line 14 minus 15)	\$3,942,364
17. Less: Ineligible Exclusions	\$0
18. Add: Contingencies	\$0
19. Total (Share: Recip 45% Fed 55%)	\$3,942,364
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$2,168,300

### Administrative Conditions

1. The recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.
2. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.
3. The recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

4. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

5. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, Lobbying and Litigation Certificate, with the final payment request.

The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

6. In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

7. If a contract is awarded under this assistance agreement, the recipient agrees and is required to utilize the following affirmative steps:

- a. placing Small Businesses in Rural Areas (SBRAs) on solicitation lists;
- b. ensuring that SBRAs are solicited whenever they are potential sources;
- c. dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
- d. establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. using the services of the Small Business Administration (SBA), the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce and the SBA PRO-Net Internet-based system <http://pro-net.sba.gov>, as appropriate; and
- f. requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.

8. The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:

- a. The recipient accepts the applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the West Virginia Department of Health and Human Resources as follows:

	<u>MBE%</u>	<u>WBE%</u>
Construction	1.87	7.40
Equipment	1.26	12.19
Services	5.16	26.75
Supplies	2.85	41.65

- b. The recipient agrees to ensure to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially or economically disadvantaged individuals, women and historically black colleges and universities.
- c. The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.
- d. The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 30.44(b), 40 CFR 31.36(e), or 40 CFR 35.6580, as appropriate, and retain records documenting compliance.
- e. The recipient agrees to submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to R. Catherine King, Municipal Financial Assistance Branch (3WP21), within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30).
- f. If race and/or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objective.

EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

9. EPA participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2004, the limit is \$524.72 per day and \$65.59 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.

### **Programmatic Conditions**

#### **1. Procurement**

a. The recipient agrees to procure all services, supplies, and construction awarded under this grant in accordance with 40 CFR Part 31.

b. A copy of all proposed subagreements for services and supplies over \$100,000 shall be submitted to the West Virginia Bureau for Public Health (WV BPH), for review and pre-award approval, as appropriate, under 40 CFR Part 31. The submittal of the proposed subagreements shall include procurement records. Also, the contract cost and price data shall be submitted on EPA Form 5700-41, or on a form which contains similar information.

c. A copy of all proposed subagreements for construction shall be submitted to the WV BPH, for review and pre-award approval, as appropriate, under 40 CFR Part 31. The submittal of the proposed subagreements shall include procurement records.

#### **2. Grant Payments**

The recipient agrees that:

a. Payments are on a reimbursable basis. Requests for payments should be submitted to the WV BPH, using Standard Form 271.

b. Payment for professional services and construction will be limited to the Federal share of EPA approved contracts.

#### **3. Project Performance Certification**

Prior to the release of the final payment on the grant, the recipient agrees to certify that the project is capable of meeting the objectives for which it was planned, designed, and built.

#### **4. Project Changes**

For any changes in the project which affect the grant amount, delay or accelerate the project or alter the project in other ways, the recipient must receive a formal grant amendment from EPA. Of particular interest is any change in completion of final design drawings and specifications, date of advertisement for bids, and the building completion date.

#### **5. Land Acquisition**

In the event the recipient procures land or relocates people, 49 CFR Part 24 applies.

## 6. Sites, Easements and Rights-of-Way

The recipient shall submit an acceptable legal opinion that the necessary sites and easements and/or rights-of-way have been obtained and that they are free of any restrictions or encumbrances that might restrict their use for the purpose intended. Said opinion shall be submitted to EPA no later than the time at which the recipient requests approval to award construction contracts.

## 7. Flood Insurance

The recipient 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, before the project is placed in operation. 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.

## 8. Review

The recipient recognizes that approval of any part of this grant, change orders, grant increase amendments, subagreements, any special items or allowableness of any other costs will be subject to final review, including project officer review, audit review, and final determination of the grant approving official.

## 9. 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 condition.

Advertise for Bids	August 2004
Award Construction Contract	October 2004
Initiate Construction	December 2004
Complete Construction	April 2006
Submit Final Payment Request	June 2006

## 10. Environmental Review

The recipient agrees not to initiate construction, until such time as EPA determines that the project complies with the National Environmental Policy Act, 42 USC Subsection 4321 et seq., CFR Parts 6 and 1500 et seq.

The recipient agrees that upon completion of the NEPA review, construction shall be undertaken in accordance with the results of that review. EPA reserves the right to unilaterally terminate this grant in the event the recipient fails to comply with this condition, in accordance with 40 CFR 31.43.

## 11. Initiation of Construction

It is agreed that the WV BPH must approve the design before contracts are advertised for bids. Bids will be submitted to the WV BPH for approval prior to contract award.

## 12. Open Competition and Government Neutrality

The assistance recipient agrees to comply with Executive Order 13202 (February 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR PUBLIC HEALTH  
OFFICE OF ENVIRONMENTAL HEALTH SERVICES

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 29, 2005

Honorable Dennis Wallace  
Mayor, City of Moundsville  
P. O. Box 248  
Moundsville, WV 26041

RE: City of Moundsville  
Water Plant Project  
XP-97307101  
PWSID No. WV3302611

Dear Mayor Wallace:

The above-referenced project has met the requirements of the Post-Bid Construction Procurement Checklist. The project is approved to continue with the award of contracts to the low bidders with regard to the STAG Grant requirements, however it is your responsibility to obtain clearance from other funding agencies or governing entities where applicable. If you have any questions, please contact me at (304) 558-6778.

Very truly yours,

John L. Reese, P.E.  
Infrastructure & Capacity Development  
Environmental Engineering Division

JLR:bms

pc: Tom Dobbs, CPA  
Tim Boland - Gwin, Dobson, & Foreman, Inc.  
Lee Murphy - US EPA  
Kathleen Blinebury - US EPA  
James Woods - City of Moundsville

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# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

12/20/05

<b>PRODUCER</b> Accordia of WV-Wheeling 1140 Chapline Street PO Box 430 Wheeling WV 26003-0066 (304) 232-0600		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> Moundsville Water Board 819 Lafayette Avenue Moundsville, WV 26041-2223		<b>COMPANIES AFFORDING COVERAGE</b> COMPANY <b>A</b> St Paul Cas Public Sector Svc COMPANY <b>B</b> COMPANY <b>C</b> COMPANY <b>D</b>

**COVERAGES**  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	6P08312701	7/01/05	7/01/08	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$								
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	6P08312701	7/01/05	7/01/08	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$								
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$								
A	<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA FORM <small>OTHER THAN UMBRELLA FORM                      OTHER THAN UMBRELLA FORM</small>	8P09312701	7/01/05	7/01/08	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000								
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL	STOP GAP-EMPLOYERS LIAB	7/01/05	7/01/08	<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTH ER</td> </tr> <tr> <td>EL EACH ACCIDENT</td> <td>\$ 1,000,000</td> </tr> <tr> <td>EL DISEASE-POLICY LIMIT</td> <td>\$ 1,000,000</td> </tr> <tr> <td>EL DISEASE-EA EMPLOYEE</td> <td>\$ 1,000,000</td> </tr> </table>	WC STATUTORY LIMITS	OTH ER	EL EACH ACCIDENT	\$ 1,000,000	EL DISEASE-POLICY LIMIT	\$ 1,000,000	EL DISEASE-EA EMPLOYEE	\$ 1,000,000
WC STATUTORY LIMITS	OTH ER												
EL EACH ACCIDENT	\$ 1,000,000												
EL DISEASE-POLICY LIMIT	\$ 1,000,000												
EL DISEASE-EA EMPLOYEE	\$ 1,000,000												
A	<b>OTHER</b> Contractors Equipment Po Commercial Auto	6P08312701 6P08312701	7/01/05 7/01/05	7/01/08 7/01/08	\$94,875 Deductible \$1,000 Comp & Coll Deductibles \$500 Each								

**DESCRIPTION OF OPERATIONS, LOCATION, VEHICLE/SPECIAL ITEMS**  
 Verification of Coverage

<b>CERTIFICATE HOLDER</b> WV Dept Of Environmental Prot Office Of Abandoned Mine Land 501 Fifty Seventh Street Box 20 Charleston, WV 25304	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT THE FURTHER TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Beth A. Kosaki</i>
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# Scottsdale Indemnity Company

## GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS OCCURRENCE COVERAGE

These supplemental declarations form a part of policy number: PEI0004667

COVERAGE	LIMITS OF LIABILITY	
General Liability Coverage Form (Occurrence Coverage)		
Bodily Injury and Property Damage Limit.....	\$ <u>1,000,000</u>	each Occurrence
Personal Injury and Advertising Injury Limit.....	\$ <u>1,000,000</u>	each Offense
Employee Benefits Injury Limit.....	\$ <u>1,000,000</u>	each Offense
Fire, Lightning or Explosion Limit.....	\$ <u>500,000</u>	each Occurrence
Medical Payments.....	\$ <u>5,000</u>	any one person
General Aggregate Limit.....	\$ <u>2,000,000</u>	
Products-Completed Operations		
Aggregate Limit.....	\$ <u>2,000,000</u>	
Deductible.....	\$ <u>N/A</u>	each Occurrence or Offense
<p><b>FORMS AND ENDORSEMENTS</b> (other than applicable forms and endorsements shown elsewhere in the policy). Forms and endorsements applying to this Coverage Part and made part of this policy at time of issue: SEE SCHEDULE OF FORMS AND ENDORSEMENTS</p>		

THIS SUPPLEMENTAL DECLARATION TOGETHER WITH THE COMMON POLICY DECLARATIONS, COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED POLICY.

## MOUNDVILLE WATER BOARD'S INSURANCE PROGRAM INDEX

The Insurance Program Index page lists each individual policy and references its specific tab number location. It also displays other policy-related information.

TAB	COVERAGE	INSURANCE COMPANY	POLICY NUMBER	EXPIRATION DATE	ANNUAL PREMIUM AT INCEPTION
1	Package	The St. Paul	GP09312701	7/1/06	\$30,196.95
2	Building and Pers. Property	The St. Paul	GP09312701	7/1/06	Included
3	Systems Breakdown	The St. Paul	GP09312701	7/1/06	Included
4	Contractors Equipment	The St. Paul	GP09312701	7/1/06	Included
5	Mobile Property	The St. Paul	GP09312701	7/1/06	Included
6	Commercial Gen. Liability	The St. Paul	GP09312701	7/1/06	Included
7	Employee Benefits Liability	The St. Paul	GP09312701	7/1/06	Included
8	Employers Liability	The St. Paul	GP09312701	7/1/06	Included
9	Employment Practices Liab.	The St. Paul	GP09312701	7/1/06	Included
10	Public Entity Management	The St. Paul	GP09312701	7/1/06	Included
11	Business Auto	The St. Paul	GP09312701	7/1/06	Included
12	Crime	The St. Paul	GP09312701	7/1/06	Included
13	Excess Liability	The St. Paul	GP09312701	7/1/06	Included
14	Excess Errors & Omissions	The St. Paul	GP09312701	7/1/06	Included
<b>TOTAL</b>					<b>\$30,196.95</b>

### Disclaimer and Notice

This Insurance Program Policy Kit serves only as a highlight of coverages contained in your insurance policies. It is not intended to replace, supersede, or amend the policies or the coverages and exclusions contained therein. Policy language controls the coverage provided.

We will be available to address any questions you may have. Questions regarding policy interpretation will be referred to your insurance company.



## COVERAGE DESCRIPTION PACKAGE

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**First Named Insured:** MOUNDSVILLE WATER BOARD  
**Insurer:** The St. Paul  
**Term:** 7/1/05 - 06  
**Policy No:** GP09312701  
**Premium:** \$29,905.00 Plus \$291.95 WV Surcharge

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**Coverage:** Individual coverage part descriptions are provided for the following:

Building and Personal Property  
Business Auto  
Commercial General Liability--Occurrence Form  
Contractors Equipment  
Crime  
Employee Benefits Liability  
Public Entity Management Liability  
Excess Liability  
Employers Liability--WV STOP-GAP  
Equipment Breakdown  
Mobile Property  
Employment Practices Liability  
Excess Errors and Omissions - Claims Made Form

**Special Conditions:** *Notice of Cancellation*  
Insurer may cancel by providing at least 10 days written notice of cancellation to the first named insured for nonpayment of premium, or 30 days notice for any other reason.

**Exclusions:** Insurance policies contain exclusions that reduce or eliminate coverage for certain types of losses and must be referred to for complete insurance coverage details. Contact a member of your account team with any questions you may have.

*This description does not contain complete insurance coverage details.  
Please refer to the policy(ies) for all terms, conditions, limitations and exclusions.*



**DISCLOSURE NOTICE  
TERRORISM RISK INSURANCE ACT OF 2002**

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The certified acts of terrorism premium charge shown below is for coverage under this policy for insured losses covered by the Terrorism Insurance Program established by the Terrorism Risk Insurance Act of 2002 (the Act). That Program applies to certain losses, if otherwise covered by your policy, that result from an "act of terrorism," as that term is defined in and certified under the Act (insured losses). This terrorism premium does not include any charges for the portion of insured losses covered by the Federal Government under the Act. The Federal Government shares in the payment of insured losses under the Act, and the amount of its share is 90% of such losses that exceed the applicable insurer deductible.

If \$0 is shown below for the certified acts of terrorism premium charge, this policy provides such terrorism coverage for no premium charge.

The certified acts of terrorism premium charge shown below does not apply to any insuring agreement or coverage part in this policy for which you did not accept our offer, for a premium charge, of such terrorism coverage. If you did not accept our offer of such terrorism coverage, this policy contains one or more exclusions that apply to certified acts of terrorism under each such insuring agreement or coverage part.

The Act establishes a cap on our liability to pay for insured losses if the aggregate amount of insured losses under the Act exceeds \$100,000,000,000 during the applicable period for all insureds and all insurers combined. In that case, we will not be liable for the payment of any amount that exceeds such aggregate amount of \$100,000,000,000.

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**Name of Insured:** MOUNDSVILLE WATER BOARD

**Policy Number:** GP09312701

**Effective Date:**

**Certified Acts Of Terrorism Premium Charge:** \$192.00

**Processing Date:** 07/18/05 12:16 001

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JUL 22 2005

CC: 000 D559  
\* 7 B O O 2 GP09312701 10311 \* M: 01 I: 000 T: 001

**POLICY INFORMATION**

The **St Paul**

**THIS IS NOT A BILL.**

**YOUR POLICY IS DIRECTLY BILLED. IF THIS IS A POLICY CHANGE, THE ADDITIONAL OR RETURN PREMIUM WILL BE SHOWN ON FUTURE INSTALLMENT BILLINGS. IF ALL INSTALLMENTS HAVE BEEN BILLED, THE PREMIUM CHANGE WILL BE BILLED OR CREDITED PROMPTLY. A BILL WILL BE SENT TO:  
THE INSURED**

**Company: ST. PAUL FIRE & MARINE INSURANCE COMPANY**

**I  
N  
S  
U** MOUNDSVILLE WATER BOARD  
**R** 819 LAFAYETTE AVENUE  
**E** MOUNDSVILLE WV 26041-2223  
**D**

**Policy Inception/Effective Date: 07/01/05  
Policy Number: GP09312701  
Agency Number: 4701292  
  
Transaction Type:  
RENEWAL OF POLICY  
Transaction number: 001  
Processing Date: 07/18/05 12:16**

**A** ACORDIA OF WEST VIRGINIA INC  
**G** P.O. BOX 1551  
**E** CHARLESTON WV 25326  
**N  
T**

Policy Number	Description	Amount	Surtax/ Surcharge
GP09312701	RENEWAL PREMIUM	\$26,713.00	
GP09312701	UMBRELLA EXCESS LIABILITY	\$3,192.00	
GP09312701	WEST VIRGINIA FIRE AND CASUALTY SURCHRG		\$291.95

THE PREMIUM SHOWN DOES NOT INCLUDE A PREMIUM PAYMENT PLAN SERVICE CHARGE. IF YOU SELECTED A PREMIUM PAYMENT PLAN YOUR PAYMENT SCHEDULE/BILL WILL SHOW THIS CHARGE.

THIS POLICY IS ON A FOUR PAY PAYMENT PLAN. A PAYMENT SCHEDULE/BILL WILL FOLLOW SHORTLY.



# CLOSING MEMORANDUM

**To:** Financing Team  
**From:** Vincent A. Collins, Esquire  
**Date:** December 21, 2005  
**Re:** City of Moundsville Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) and Series 2005 B (West Virginia Water Development Authority)

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## 1. DISBURSEMENTS TO CITY OF MOUNDSVILLE

- A. Payor: United States of America, Department of Agriculture  
Source: Series 2005 A Bonds Proceeds  
Amount: \$ 1,098,000  
Form: ACH Transfer  
Payee: City of Moundsville  
Bank: Progressive Bank, N.A., Wheeling, WV  
1701 Warwood Avenue  
Wheeling, WV 26003  
Routing #: 043403224  
Account #: 1511989  
Contact: Harold Thomas or Todd Hayes (304.277.1100)  
Account: City of Moundsville Series 2005 A Bonds Construction Trust Fund
- B. Payor: West Virginia Water Development Authority  
Source: Series 2005 B Bonds Proceeds  
Amount: \$ 9,745,000  
Form: Wire Transfer  
Payee: City of Moundsville  
Bank: Progressive Bank, N.A., Wheeling, WV  
1701 Warwood Avenue  
Wheeling, WV 26003  
Routing #: 043403224  
Account #: 1511997  
Contact: Harold Thomas or Todd Hayes (304.277.1100)  
Account: City of Moundsville Series 2005 B Bonds Construction Trust Fund

## 2. DISBURSEMENTS TO PROGRESSIVE BANK, N.A.

- A. Payor: City of Moundsville  
Amount: \$ 1,097,376.94  
Form: Internal Transfer  
Payee: Progressive Bank, N.A., Wheeling, West Virginia  
1701 Warwood Avenue  
Wheeling, WV 26003

Source: Series 2005 A Bonds Construction Trust Fund (Account #  
1511989)  
Routing #: 043403224  
Account #: 97734  
Purpose: Payment in full of the entire outstanding principal of and all accrued  
interest on the Waterworks System Refunding Bond Anticipation  
Notes, Series 2000

12/14/05  
636290.00001

**State of West Virginia**  
**WATER DEVELOPMENT AUTHORITY**  
 180 Association Drive, Charleston, WV 25311-1217  
 (304) 558-3612 - (304) 558-0299 (Fax)  
 Internet: www.wvwda.org - Email: contact@wvwda.org

**BOND CLOSING ATTENDANCE LIST**

Date 12/21/05 Time 9 a.m. LGA City of Moundsville Program WDA

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
John Stump	Stoptec Johnson PLLC	304.353.8196	304.353.8181	john.stump@stoptecjohnson.com
Doug Olds	WV WDA	558-3612	558-0299	dolds@wvwda.org
Samme Cree	JACKSON KELLY PLLC	348.1318	348.1292	scree@jacksonkelly.com
BERNIE YONKOSKY	WV WDA	558-3612	558-0299	byonkosky@wvwda.org

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

Name Allen Hendershot Telephone 304.845.3394 E-Mail N/A  
 Address P.O. Box C, Moundsville WV 26041

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



CITY OF MOUNDSVILLE

Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)

RECEIPT OF DEPOSITORY BANK

The undersigned duly authorized representative of the Progressive Bank, N.A., Wheeling, West Virginia (the "Bank"), hereby certifies that on December 21, 2005, the Bank received an automated clearinghouse transfer in the amount of \$1,098,000 to the credit of the City of Moundsville Series 2005 A Bonds Construction Trust Fund, Account Number 1511989.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

PROGRESSIVE BANK, N.A.

By: Harold O. Thomas  
Its: Authorized Officer

12/15/05  
636290.00001



CITY OF MOUNDSVILLE

Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)

RECEIPT OF PAYMENT OF THE PRIOR NOTES

The undersigned duly authorized representative of Progressive Bank, N.A.,  
Wheeling, West Virginia ("Bank") hereby certifies as follows:

On the 21<sup>st</sup> day of December, 2005, the Bank received the sum of  
\$1,097,376.94 from the City of Moundsville and such amount is sufficient to pay the entire  
outstanding principal of and all accrued interest on the City of Moundsville Waterworks  
System Refunding Bond Anticipation Notes, Series 2000, to the date hereof and discharge  
the liens, pledges and encumbrances securing such Notes.

WITNESS my signature on this 21<sup>st</sup> day of December, 2005.

PROGRESSIVE BANK, N.A.

By: Harold O. Thomas  
Its: Authorized Officer

12/15/05  
636290.00001



WEST VIRGINIA WATER DEVELOPMENT AUTHORITY  
LOAN PROGRAM IV  
REQUISITION AS TO LOAN TO GOVERNMENTAL AGENCY

TO: THE BANK OF NEW YORK, Trustee

A. Name of Governmental Agency to which payment is to be made:  
City of Moundsville (the "Governmental Agency")

B. (i) Par amount: \$9,745,000  
(ii) Total amount to be paid: \$9,745,000

C. Certification by West Virginia Water Development Authority (the "Authority") for its Loan Program IV.

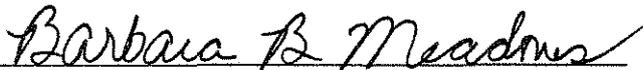
I hereby certify that under the terms and provisions of the Loan Agreement providing for the Loan to the Governmental Agency, dated as of December 21, 2005 (the "Loan Agreement"), the Governmental Agency has sold its Water Revenue Bonds, Series 2005 B (the "Local Bonds"), to the Authority in the principal amount equal to the amount of the Loan set forth in (B) (i) above, that the Governmental Agency is obligated to make Local Bond Payments and to pay Fees and Charges in accordance with Sections 9.06 and 9.09 of the General Resolution and that the Governmental Agency is not in default under any of the terms or provisions of the Loan Agreement.

I further certify that the Local Bond Payments will be sufficient to pay interest on and Principal Installments of the Local Bonds, the proceeds of which were used to fund the Loan Obligations, as such interest and Principal Installments come due.

The above certification complies with Subsections 6.05(3)(ii) and (v) of the General Resolution.

Dated this 21<sup>st</sup> day of December, 2005.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative



  
**United States Department of Agriculture**  
**Rural Development**  
**Parkersburg Area Office**

November 29, 2005

Allen Hendershot, City Manager  
City of Moundsville  
P.O. Box E  
Moundsville, WV 26041

Dear Mr. Hendershot:

The pre-closing for the City's Rural Utilities Service (RUS) loan will be held on December 19, 2005, at 10:00 AM at the City's Water Department Office in Moundsville, West Virginia. The preconstruction conference will follow at 11:00 AM. The official loan closing date for the City's Water Treatment Plant Project will be December 21, 2005.

Reference is made to our Letter of Conditions dated April 27, 2005. All of the requirements of these letters must be met and in addition, the loan must be closed in accordance with RUS Instruction 1780 and "Closing Guidelines for Community Facilities Loans to Public Bodies."

The RUS loan of \$4,900,000 will be closed utilizing an interest rate of 4.25%, resulting in payments of \$21,707 per month. The City will establish and fund monthly a debt service reserve account which equals 10% of the monthly payments until you accumulate the equivalent of one annual installment on the loans. This account must be established with the West Virginia Municipal Bond Commission.

The following items should be submitted to our office as soon as possible but not later than December 12, 2005:

1. The City's engineer must provide a resume of the proposed inspector(s).
2. The City must provide a letter accepting the proposed inspector(s).
3. The City must provide evidence that it has acquired insurance and bond coverage in accordance with Item 11 of the Letter of Conditions. The position fidelity coverage must be increased to at least the amount of the estimated highest monthly construction drawdown. Once construction is complete, the position fidelity coverage may be decreased to not less than the amount of one annual installment on your RUS loan.
4. The City must furnish evidence that it provides State Workers' Compensation Insurance. A certificate of good standing will be satisfactory.
5. An advance copy of the first drawdown.

P.O. Box 303 Parkersburg, WV 26102-0303  
Phone: (304) 420-6666 • Fax: (304) 420-6876 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

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

6. Evidence of the Abandoned Mine Lands and Reclamation (AML) funding award/binding commitment.
7. A payoff for December 21, 2005 from Progressive Bank.

On the day of preclosing, the following documents must be provided:

1. The City's attorney will need to provide Form RD 442-22 "Opinion of Counsel Relative to Rights of Way," showing no exceptions. This form should be dated December 21, 2005.
2. The City's attorney must furnish a Form RD 1927-10 "Final Title Opinion," on all property owned by the City and pertaining to the water system. A single final title opinion may be provided if it includes an attachment which adequately addresses each of the parcels identified in the preliminary title opinions. The opinion should be dated December 21, 2005.
3. The City must furnish evidence that the West Virginia Public Service Commission has approved the project's proposed financing.
4. The City must furnish evidence that the West Virginia Infrastructure Jobs Development Council has approved the project.

If you have any questions regarding these or any other matters pertaining to your loan, please contact our office at your earliest convenience.

Sincerely,

VIRGINIA M. McDONALD  
Rural Development Specialist

Enclosure

cc: State Director  
USDA-Rural Development  
Morgantown, WV

Thomas P. Boland, P.E.  
Gwin, Dobson & Foreman  
Altoona, PA

John L. Allen, Esquire  
Wheeling, WV

James V. Kelsh, Esquire  
Charleston, WV

John Stump, Esquire  
Steptoe & Johnson, PLLC  
Charleston, WV

Vince Collins, Esquire  
Steptoe & Johnson, PLLC  
Morgantown, WV

Tom Aman, Esquire.  
Steptoe & Johnson, PLLC  
Clarksburg, WV

**CLOSING GUIDELINES FOR  
COMMUNITY FACILITY LOANS TO PUBLIC BODIES**

At or before the closing for the financing, the following conditions must be satisfied:

1. **General Requirements.** There must be full compliance with all requirements specified in (a) applicable Farmers Home Administration Instructions, (b) correspondence from OGC, (c) any applicable correspondence from the Administrator's office, (d) FmHA letter of conditions, (e) clearinghouse comments, and (f) any state office memorandum of approval.
2. **Loan Resolution.** Confirm that the Applicant has duly adopted the fully executed Form FmHA 1942-47, Loan Resolution (Public Bodies).
3. **Grant Agreement.** In the event that a grant is also to be made to the Applicant, then the grant may be closed in accordance with FmHA Instructions provided that these Closing Instructions have also been complied with and duly authorized officials of the Applicant have fully executed Form FmHA 1942-31, Grant Agreement.
4. **Civil Rights.** Confirm that the following fully executed civil rights forms are in the docket:
  - a. Form RD 400-1, Equal Opportunity Agreement.
  - b. Form RD 400-4, Assurance Agreement.
  - c. Form FmHA 400-8, Compliance Review (Pre-loan closing).
5. **Environmental Impact.** Confirm that a completed and executed Environmental Impact Assessment, is in the docket. If the Assessment indicates that an Environmental Impact Statement must be filed, this must be accomplished prior to loan closing.
6. **Clearinghouse Comments.** Confirm that A-95 approvals have been received from both state and regional clearinghouses. Note any comments received and confirm that the Applicant intends to comply with such comments. If the Applicant expresses a contrary intention, the State Office should be notified immediately in detail. The State Office should consult OGC with respect to the legal ramification of any such noncompliance.
7. **Specimen Bond(s).** Prior to closing, confirm that the terms of the specimen bond(s) are consistent with FmHA Instructions, the FmHA Letter of Conditions and other obligating documents. Amortization schedules and maturity dates should be checked very carefully.
8. **Certification of Payment.** If FmHA loan proceeds will be used to retire interim indebtedness, the Applicant must provide FmHA with written statements in accordance with FmHA Instruction 1942-A, 1942.17(n)(2) [7 C.F.R. 1942.17].

- e. **Certified documents evidencing that the Applicant has complied fully with all statutory requirements incident to advertising the consideration and/or adoption of the bond ordinance unless Bond Counsel advises you that this is not applicable.**
- f. **Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvements, if such documents are not included in the minutes furnished.**
- g. **Copies of official Notice of Sale and Affidavit of Publication of Notice of Sale unless Bond Counsel advises you that this is not applicable.**
- h. **Specimen Bond (of each denomination), with any attached coupons.**
- i. **No Litigation Certificate of Local Counsel (See Item 12 below).**
- j. **Certified copies of resolutions or other documents pertaining to the award of the Bond(s).**
- k. **Non-Arbitrage Certificate.**
- l. **Any additional or supporting documents required by Bond Counsel.**
- m. **Preliminary approving opinion, if any, and final unqualified approving opinion of Bond Counsel, including opinion regarding interest on bonds being exempt from Federal and any State income taxes.**

Any omissions from the Bond transcript should be supplied by the Rural Development Specialist with the assistance of the Applicant and Bond Counsel. Obviously, certain of the documents listed above will normally be delivered prior to the closing.

- 12. **Attorney's No-Litigation Certificate.** Local Counsel should deliver a manually-executed original attorney's no-litigation certificate dated the date of closing.
- 13. **Evidence of Title.** In all cases, confirm that Local Counsel has supplied FmHA with his or her title opinion regarding the sites for any project structures such as treatment plants and community buildings. The opinion should be on Form FmHA 1927-10 with any changes necessary to reflect the circumstances of this financing. In the case of utility-type financings, confirm that executed Form FmHA 442-21 and 442-22 concerning rights-of-way are also in the docket. Any title exceptions should either be removed prior to closing or be specifically cleared through OGC.
- 14. **Additional Instructions.** OGC will normally issue additional closing instructions on a case-by-case basis containing special requirements for specific loans. The District Director should review the Closing Instructions prepared by OGC relating to the specific case and close the loan in accordance with those instructions.

**Funding Breakdown for Requisition No. 1**  
**City of Moundsville Water Project**

**Requisition No. 1**

**December 21, 2005**

<b>Payee</b>	<b>Budget Line Item</b>	<b>RUS Loan</b>	<b>WDA Loan</b>	<b>AML Grant</b>	<b>STAG Grant</b>	<b>Total</b>
Progressive Bank, N.A.	Refinance	\$1,097,376.94	\$	\$	\$	\$1,097,376.94
Bachmann Hess Bachmann & Garden PLLC	Legal Fees- Local	\$	\$ 6,834.05	\$	\$	\$ 6,834.05
Steptoe & Johnson PLLC	Bond Counsel	\$	\$ 55,000	\$	\$	\$ 55,000
<b>Total This Request</b>		<b>\$1,097,376.94</b>	<b>\$ 61,834.05</b>	<b>\$</b>	<b>\$</b>	<b>\$1,159,210.99</b>
<b>Total Requested to Date</b>		<b>\$1,097,376.94</b>	<b>\$ 61,834.05</b>	<b>\$</b>	<b>\$</b>	<b>\$1,159,210.99</b>

**Approved By:**

Rural Utilities Service

By: Virginia McDonald  
 Title: Rural Development Specialist  
 Date: 12/21/05

**City of Moundsville  
Water Project**

**Requisition No. 1**

**December 21, 2005**

<b>Payee</b>	<b>Budget Line Item</b>	<b>RUS Loan</b>	<b>WDA Loan</b>	<b>AML Grant</b>	<b>STAG Grant</b>	<b>Total</b>
Progressive Bank, N.A.	Refinance	\$1,097,376.94	\$	\$	\$	\$1,097,376.94
Bachmann Hess Bachmann & Garden PLLC	Legal Fees- Local	\$	\$ 6,834.05	\$	\$	\$ 6,834.05
Step toe & Johnson PLLC	Bond Counsel	\$	\$ 55,000	\$	\$	\$ 55,000
<b>Total This Request</b>		\$1,097,376.94	\$61,834.05	\$	\$	\$1,159,210.99
<b>Total Requested to Date</b>		\$1,097,376.94	\$61,834.05	\$	\$	\$1,159,210.99

**Recommended for Payment:**

By: Thomas E. Boland, P.E.  
Gwin, Dobson & Foreman, Inc.

Date: 12/21/05

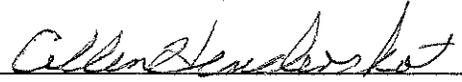
**Resolution of the City of Moundsville**

Whereas, the City of Moundsville has reviewed the attached invoices relating to the proposed water treatment plant project and finds as follows:

1. That none of the items for which payment is proposed under this requisition has formed the basis for any disbursement heretofore made.
2. 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.
3. That each of such costs has been otherwise properly incurred; and
4. That payment for each of the items proposed is then due and owing.

Now, therefore, be it resolved by the City of Moundsville that the payment of the attached invoices, as summarized above, is hereby authorized and directed.

Adopted by the City of Moundsville at a meeting held on the 13th day of December, 2005.

By:   
Allen Hendershot, City Manager

Approved for Payment:

By:   
USDA Rural Development, RUS

Date: 12-21-05

CLARKSBURG, WEST VIRGINIA 26301

IN ACCOUNT WITH

**STEPTOE & JOHNSON PLLC**

Attorneys at Law

FEIN 55-0286140

December 21, 2005

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

Allen Hendershot  
City Manager  
City of Moundsville  
800 Sixth Street  
P.O. Box E  
Moundsville, WV 26041

Services as Bond Counsel and out-of-pocket expenses \$55,000

**TOTAL DUE** \$55,000.00

12/01/05  
636290.00001

CL1063285.1

**Funding Breakdown for Requisition No. 1**  
**City of Moundsville Water Project**

**Requisition No. 1**

**December 21, 2005**

<b>Payee</b>	<b>Budget Line Item</b>	<b>RUS Loan</b>	<b>WDA Loan</b>	<b>AML Grant</b>	<b>STAG Grant</b>	<b>Total</b>
Progressive Bank, N.A.	Refinance	\$1,097,376.94	\$	\$	\$	\$1,097,376.94
Bachmann Hess Bachmann & Garden PLLC	Legal Fees- Local	\$	\$ 6,834.05	\$	\$	\$ 6,834.05
Steptoe & Johnson PLLC	Bond Counsel	\$	\$ 55,000	\$	\$	\$ 55,000
<b>Total This Request</b>		<b>\$1,097,376.94</b>	<b>\$ 61,834.05</b>	<b>\$</b>	<b>\$</b>	<b>\$1,159,210.99</b>
<b>Total Requested to Date</b>		<b>\$1,097,376.94</b>	<b>\$ 61,834.05</b>	<b>\$</b>	<b>\$</b>	<b>\$1,159,210.99</b>

**Approved By:**

Rural Utilities Service

By: *Virginia McDonald*  
 Title: Rural Development Specialist  
 Date: 12/21/05

**Moundsville Water Board  
Water Project**

**Requisition No. 1**

**December 21, 2005**

<b>Payee</b>	<b>Budget Line Item</b>	<b>RUS Loan</b>	<b>WDA Loan</b>	<b>AML Grant</b>	<b>STAG Grant</b>	<b>Total</b>
Progressive Bank, N.A.	Refinance	\$ 1,097,376.94	\$	\$	\$	\$ 1,097,376.94
Bachmann Hess Bachmann & Garden PLLC	Legal Fees- Local	\$	\$ 6,834.05	\$	\$	\$ 6,834.05
Steptoe & Johnson PLLC	Bond Counsel	\$	\$ 55,000	\$	\$	\$ 55,000
<b>Total This Request</b>		\$1,097,376.94	\$61,834.05	\$	\$	\$1,159,210.99
<b>Total Requested to Date</b>		\$1,097,376.94	\$61,834.05	\$	\$	\$1,159,210.99

**Recommended for Payment:**

By: Thomas E. Boland, P.E.  
Gwin, Dobson & Foreman, Inc.

Date: 12/21/05

## Resolution of the Moundsville Water Board

Whereas, the Moundsville Water Board has reviewed the attached invoices relating to the proposed water treatment plant project and finds as follows:

1. That none of the items for which payment is proposed under this requisition has formed the basis for any disbursement heretofore made.
2. 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.
3. That each of such costs has been otherwise properly incurred; and
4. That payment for each of the items proposed is then due and owing.

Now, therefore, be it resolved by the Moundsville Water Board that the payment of the attached invoices, as summarized above, is hereby authorized and directed.

Adopted by the Moundsville Water Board at a meeting held on the 12<sup>th</sup> day of December, 2005.

By: Thomas A Ferris  
Chairman

Approved for Payment:

By: Virginia McDonald  
USDA Rural Development, RUS

Date: 12/21/05



Bank One Center, Eighth Floor  
P.O. Box 1588  
Charleston, WV 25326-1588  
(304) 353-8000 (304) 353-8180 Fax  
[www.step toe-johnson.com](http://www.step toe-johnson.com)

Writer's Contact Information  
304.624.8136 (Phone)  
304.624.8183 (Fax)

December 21, 2005

Via First Class Mail

Mr. Harold Thomas  
Progressive Bank, NA.  
1701 Warwood Avenue  
Wheeling, WV 26003

City of Moundsville  
Water Revenue Bonds, Series 2005 A  
(United States Department of Agriculture)  
Water Revenue Bonds, Series 2005 B  
(West Virginia Water Development Authority)

Dear Mr. Thomas:

The City of Moundsville (the "City") will deposit \$1,098,000, being a portion of the proceeds of the Series 2005 A Bonds, into the Series 2005 A Bonds Construction Trust Fund (the "USDA Account") maintained at your bank on December 21, 2005 (the "Closing Date"). The USDA Account shall be a non-interest bearing account. Proceeds of the West Virginia Office of Abandoned Mine Lands Grant (the "AML Grant") and the State and Tribal Assistance Grant (the "STAG Grant") awarded to the City for the Project shall be deposited into the USDA Account upon receipt subsequent to the Closing Date as outlined below. The City will also deposit \$9,745,000, being the entire proceeds of the Series 2005 B Bonds, into the Series 2005 B Bonds Construction Trust Fund (the "WDA Account") maintained at your bank on the Closing Date. The WDA Account shall be an interest bearing account. The purpose of this letter is to describe the disbursement procedures for these funds as previously agreed to by the parties to this financing.

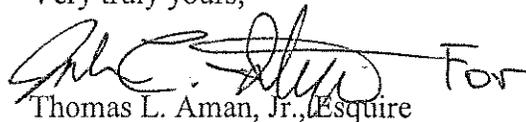
Following the Closing Date for this financing, the proceeds of the Series 2005 A Bonds, the AML Grant and the STAG Grant shall be requisitioned on a monthly basis and deposited upon receipt into the USDA Account in accordance with the following procedure. Every thirty (30) days following the Closing Date, Gwin, Dobson & Foreman, Inc., the consulting engineer for the Project, shall complete the requisition form and resolution attached hereto as Exhibit A with the project costs incurred over the preceding thirty (30) day period. All invoices and supporting documentation for the project costs included in the requisition shall be attached to the requisition by the consulting engineer. The consulting engineer will then submit the monthly requisition to the Moundsville Water Board and USDA for review and approval.

CL1062722.1

The Moundsville Water Board shall then review, and if appropriate, approve the monthly requisition at the next meeting of the Board at which such approval can be placed on the agenda. Following the approval of the Moundsville Water Board, the City shall then consider the monthly requisition for approval at its next following council meeting in the form of the resolution which is attached hereto as Exhibit B. Following the approval of both the Moundsville Water Board and the City, the Water Board shall then submit the monthly requisition to USDA, and the administrators of the AML Grant and the STAG Grant for approval. If the USDA and grant administrators approve the monthly requisition, the City can then transfer the funds indicated in the requisition from the WDA Account to the USDA Account. At such time, the approved AML Grant and STAG Grant funds shall be disbursed by the funding agencies into the USDA Account.

After the requisitioned proceeds of the Series 2005 A Bonds, Series 2005 B Bonds, AML Grant and STAG Grant have been transferred to the USDA Account, the Moundsville Water Board may then pay from the USDA Account the project costs which were included in the approved monthly requisition.

Very truly yours,

 For  
Thomas L. Aman, Jr., Esquire

TLA

Enclosures

cc (with/encl): James Woods, Superintendent  
Allen Hendershot, City Manager  
Mark Glenn, PE  
John L. Allen, Esquire  
Thomas E. White, Esquire  
James V. Kelsh, Esquire  
Thomas L. Dobbs, CPA  
Daniel B. Yonkosky, Director  
Virginia M. McDonald, RD Specialist  
Francesca Tan, Esquire

636290.00001

CL1062722.1