OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

Closing Date: February 28, 2011

TRANSCRIPT OF PROCEEDINGS

DOCUMENT NO.	DESCRIPTION	INDEX NO.
	I. Organizational Documents	
1.1	Certified copies of Chapter 7, Article 12, Chapter 8, Article 16 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.	1
1.2	Orders of The County Commission of Ohio County (the "County Commission") creating the Ohio County Development Authority (the "Issuer").	2
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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

PRECLOSING ATTENDANCE LIST

Date Feb 25, 2011 Time 3 pm. LGA Ohio County Development Authority Program Interest Fund

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Carol A. Cummings	WDA	304-558-3612	304-558-0299	ccummings@wvwda.org
Sammie Cole	Jacksonkelly PLLC	304 340 1018	304 340 1272	scole@jacksonkelly.com
Mark Kauffelt	Kauffelt & Kauffelt	304-345-1272	304-345-1280	MKAUFFELT @ WVDSL.NET

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 Greg Stewart Telephone 304.234.3628 E-Mail OHcountystewart@aol.com

Address 1500 Chapline Street, 215 City County Building, Wheeling, WV 26003

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.

MEMORANDUM

FROM: **Christopher P. Riley** CPR February 28, 2011

TO: File

RE: Ohio County Development Authority – EDA Water Main Project - Record Information for Financing Documents

Document	Date & Time	Book & Page
Credit Line Deed of Trust, Security Agreement, and Fixture Filing, dated February 23, 2011, by the Ohio County Development Authority to Chris Jarrett, Trustee, for the benefit of the West Virginia Water Development Authority	Date: 02/28/11 Time: 11:09:17 a.m.	Book: 1411 Page: 351
Assignment of Rents & Leases, dated February 23, 2011, by the Ohio County Development Authority to the West Virginia Water Development Authority	Date: 02/28/11 Time: 11:12:33 a.m.	Book: 817 Page: 346
Intercreditor Agreement, dated February 18, 2011, by and among the Ohio County Development Authority to the West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council, and WesBanco Bank, Inc.	Date: 02/28/11 Time: 11:14:59 a.m.	Book: 1411 Page: 370

Credit Line Deed of Trust

Print Date Monday, Feb 28 2011
Print Time 11:12:22 AM

OHIO County
Instrument No 19376123
Recorded Date 02/28/2011
Transaction Time 11:09:17 AM
Name1 OHIO COUNTY DEVELOPME
NT AUTHORITY
Name2 WEST VIRGINIA WATER D
EVELOPMENT AUTHORITY
Document Type CL/DT
Pages Recorded 19
Book-Page 1411-351
Total Due $0.00
Multi Received $0.00
Change $0.00

Assignment of Rents

Print Date Monday, Feb 28 2011
Print Time 11:14:21 AM

OHIO County
Instrument No 19376129
Recorded Date 02/28/2011
Transaction Time 11:12:33 AM
Name1 OHIO COUNTY DEVELOPME
NT AUTHORITY
Name2 WEST VIRGINIA WATER D
EVELOPMENT AUTHORITY
Document Type A/LSE
Pages Recorded 14
Book-Page 817-346
Total Due $0.00
Multi Received $0.00
Change $0.00

Intercreditor Agreement

Print Date Monday, Feb 28 2011
Print Time 11:17:46 AM

OHIO County
Instrument No 19376133
Recorded Date 02/28/2011
Transaction Time 11:14:59 AM
Name1 WEST VIRGINIA WATER D
EVELOPMENT AUTHORITY
Name2 WESBANCO BANK INC
Document Type D/T
Pages Recorded 10
Book-Page 1411-370

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 7, ARTICLE 12 OF THE WEST VIRGINIA CODE, AND CHAPTER 7, ARTICLE 12 OF THE 2010 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on
February 23, 2011

Natalie E. Tennant

Secretary of State

ARTICLE 12

COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES

Section
7-12-1. Establishment authorized; name; exceptions.
7-12-2. Purposes.
7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.
7-12-3a. Management and control of municipal authority vested in board; appointment and terms of members; vacancies; removal of members.
7-12-4. Qualifications of members.
7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.
7-12-6. Authority to be a public corporation.
7-12-7. Powers generally.
7-12-7a. Findings respecting necessity for exercise of right of eminent domain; authorization to exercise right of eminent domain.
7-12-8. Incurring indebtedness; rights of creditors.
7-12-9. Agreements in connection with obtaining funds.
7-12-9a. Joint undertakings by county development authorities.
7-12-10. Property, bonds and obligations of authority exempt from taxation.
7-12-11. Participation and appropriations authorized; transfers and conveyances of property.
7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts.
7-12-13. Sale or lease of property; reversion of assets upon dissolution.
7-12-14. Employees to be covered by workers' compensation.
7-12-15. Liberal construction of article.
7-12-16. Provisions severable.

§ 7-12-1. Establishment authorized; name; exceptions

Except as hereinafter provided, the governing body of every municipality and the county commission of every county is hereby authorized to create and establish a public agency to be known as a development authority. The name of the authority shall contain the words "development authority," together with the designation of the municipality or the county within which such authority is intended to operate. Nothing in this article contained, however, shall be construed as permitting the governing body of any municipality or county commission of any county in which there exists, on the date on which this article becomes effective, one or more public development authorities, corporations or commissions, organized and existing pursuant to an act or acts of the Legislature, either local or general, and performing substantially the same or similar functions as the development authorities herein authorized, to create and establish such a development authority until such time as all such other public development authorities, corporations and commissions cease operations in such municipality or county: Provided, That nothing herein shall be construed to prohibit the creation and establishment of a municipal development authority when a county or regional development authority exists, and any municipal development authority shall have the exclusive right to exercise

its powers granted pursuant to this article within the boundaries of the municipality.

Acts 1963, c. 29; Acts 1986, c. 58.

Cross References

County commissions, authority to lease, sell or dispose of county, see § 7-1-3hh.

Library References

Key Numbers
Counties ⚷22.
Municipal Corporations ⚷284(1).
Westlaw Key Number Searches: 104k22; 268k284(1).

Encyclopedias
C.J.S. Counties §§ 41 to 42.
C.J.S. Municipal Corporations § 967.

§ 7-12-2. Purposes

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the municipality or county.

Acts 1963, c. 29; Acts 1986, c. 58.

Library References

Key Numbers
Counties ⚷22.
Municipal Corporations ⚷284(1).
Westlaw Key Number Searches: 104k22; 268k284(1).

Encyclopedias
C.J.S. Counties §§ 41 to 42.
C.J.S. Municipal Corporations § 967.

§ 7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members

The management and control of a county authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the county commission and be known as members of the authority. The county commission shall

appoint one member to represent the county commission on the board and, for each municipality located within the county, the county commission shall appoint one member to represent the municipality. The city and town council of each municipality located within the county shall submit to the county commission the names of three persons, one of whom the county commission shall appoint to be the municipality's representative on the board. Other members of the board shall be appointed by the county commission and shall include representatives of business, industry and labor . The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the county commission may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the county commission to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The county commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor member for any member so removed.

Other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county, shall be eligible to participate in and request the county commission to appoint members to the development authority as the said authority shall by its bylaws provide.

Acts 1969, c. 29; Acts 1986, c. 58; Acts 2000, c. 71, eff. 90 days after March 11, 2000.

Library References

Key Numbers
Counties ⚷22.
Westlaw Key Number Search: 104k22.

Encyclopedias
C.J.S. Counties §§ 41 to 42.

§ 7-12-3a. Management and control of municipal authority vested in board; appointment and terms of members; vacancies; removal of members

The management and control of a municipal authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the governing body and be known as members of the authority. One member of the authority shall also be a member of the governing body appointed to represent it on the board. Other members shall be appointed by the governing body and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for

any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the authority by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the municipality, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides.

Acts 1986, c. 58.

Library References

Key Numbers
Municipal Corporations ⚷284(1).
Westlaw Key Number Search: 268k284(1).

Encyclopedias
C.J.S. Municipal Corporations § 967.

§ 7-12-4. Qualifications of members

(a) In addition to the appointing agencies as provided for in section three of this article, such other persons, firms, unincorporated associations and corporations, which reside or maintain offices in the county of the development authority, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides. Members can also be drawn from citizens of a county contiguous to the county in which the county development authority is located regardless of their state of residence.

(b) Any person employed by, owning an interest in, or otherwise associated with a public utility company as defined in section two, article one, chapter twenty-four of this code or bank as defined in section two, article one, chapter thirty-one-a of this code may serve as a board member and shall not be disqualified from serving as a board member because of conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under the provisions of said section when the violation is created solely as a result of his or her relationship with the bank or public utility. This member must recuse himself or herself from board participation regarding the conflicting issue as provided for in section five of this article.

Acts 1963, c. 29; Acts 1986, c. 58; Acts 1995, c. 111, eff. 90 days after Feb. 20, 1995.

Library References

Key Numbers
Counties ⚷22.
Municipal Corporations ⚷284(1).

Westlaw Key Number Searches: 104k22; 268k284(1).

C.J.S. Municipal Corporations § 967.

Encyclopedias

C.J.S. Counties §§ 41 to 42.

§ 7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved

(a) No member of the authority shall receive any compensation, whether in formal salary, per diem allowance or otherwise, in connection with his or her services as such member. Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as such member.

(b) Whenever a person associated with a public utility or bank as set out in section four of this article has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

Acts 1963, c. 29; Acts 1988, c. 29; Acts 1995, c. 111, eff. 90 days after Feb. 20, 1995.

§ 7-12-6. Authority to be a public corporation

The authority and the members thereof shall constitute and be a public corporation under the name provided for in section one, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded, and have and use a common seal.

Acts 1963, c. 29.

Library References

Key Numbers

Counties ⚷22.
Municipal Corporations ⚷284(1).
Westlaw Key Number Searches: 104k22; 268k284(1).

Encyclopedias

C.J.S. Counties §§ 41 to 42.
C.J.S. Municipal Corporations § 967.

§ 7-12-7. Powers generally

The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex, including, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or

departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage, and maintain such buildings and structures and provide adequate insurance of all types, and in connection with the primary use thereof and incidental thereto to provide such services, such as barber shops, newsstands, drugstores and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (6) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (7) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (8) to acquire real property by gift, purchase, or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the board of directors of the development authority; (9) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed, and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, on such terms as the authority shall determine, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a "governing body" within the definition of that term as used in said article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the

general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

The amendment of this section enacted in the year one thousand nine hundred ninety-eight, is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority, and shall be retroactive to the date of the prior enactment of this section.

Acts 1963, c. 29; Acts 1972, c. 25; Acts 1998, c. 105, eff. March 14, 1998.

Library References

Key Numbers

Counties ⚷22.
Municipal Corporations ⚷284(1).
Westlaw Key Number Searches: 104k22; 268k284(1).

Encyclopedias

C.J.S. Counties §§ 41 to 42.
C.J.S. Municipal Corporations § 967.

§ 7-12-7a. Findings respecting necessity for exercise of right of eminent domain; authorization to exercise right of eminent domain

(a) It is hereby found and determined by the legislature that in fulfilling their prescribed purposes and exercising their powers, including the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county for which created by acquiring lands and other real property to be furnished by lease, sale or other disposition as industrial sites, county development authorities are performing essential public purposes; that the performance of such essential public purposes are frequently impeded, unduly delayed, or wholly frustrated by imperfections in the title to essential land and other real properties, by lost heirs or widely scattered owners of undivided interests in essential lands and other real properties and by owners of relatively small but essential parcels of a proposed land development site who refuse to sell their land or other real property to the county; and, that the exercise by county development authorities of the right of eminent domain within the limitations herein provided is therefore necessary and appropriate to achieve the said public purposes of county development authorities.

(b) Any county development authority heretofore or hereafter created by a county commission pursuant to the authority of this article is hereby authorized and empowered to exercise the right of eminent domain if an order of such county commission authorizing exercise of the right of eminent domain as to any proposed acquisition is first made and entered and at least three fourths of the entire tract has either been purchased, optioned, or is under contract to be purchased: Provided, That prior to the issuance of the order by the county commission, it shall hold a public hearing on the public necessity of the exercise of eminent domain and shall cause a Class II legal advertisement to be published in accordance with the provisions of section two, article three, chapter fifty-nine, prior to the hearing: Provided, however, That a separate hearing must be held and a separate order promulgated for each parcel over which the authority wishes to exercise the power of eminent domain: Provided

further, That the right of eminent domain shall not be exercised to acquire real property which exceeds one fourth of any land development site proposed by the county development authority, and the aforesaid order of a county commission shall specifically state the anticipated size of the entire site with respect to which the exercise by a county development authority of the right of eminent domain is authorized.

Acts 1978, c. 23.

Library References

Key Numbers
Eminent Domain ⚷9.
Westlaw Key Number Search: 148k9.

Encyclopedias
C.J.S. Eminent Domain § 24.

§ 7-12-8. Incurring indebtedness; rights of creditors

The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature, or amount, interest rate or duration of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the governing body of the municipality or county commission of the municipality or county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county commission, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

Acts 1963, c. 29; Acts 1972, c. 25; Acts 1986, c. 58.

Library References

Key Numbers
Counties ⚷149.
Municipal Corporations ⚷858.
Westlaw Key Number Searches: 104k149; 268k858.

Encyclopedias
C.J.S. Counties §§ 185, 187.

§ 7-12-9. Agreements in connection with obtaining funds

The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government; or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

Acts 1963, c. 29.

§ 7-12-9a. Joint undertakings by county development authorities

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county economic development au-

thorities should share in the tax revenues derived from joint programs regardless of the county in which they are located.

(b) Any three or more county development authorities may contract to share expenses for and revenues derived from joint economic development projects within their respective geographic territories. Notwithstanding any other section of the code to the contrary, county development authorities may contract to distribute on a pro rata basis proceeds derived from joint economic development projects.

(c) Each county development authority participating in a joint economic development project contract must contribute at least fifteen thousand dollars in cash to the project.

(d) In the event that a county development authority desires to withdraw from participation, then the remaining participants may jointly choose a successor. No withdrawing county development authority shall be entitled to the return of any money or property advanced to the project, unless specifically provided for in the contract.

(e) In the event that a joint economic development project is terminated, all funds, property and other assets shall be returned to the county development authorities in the same proportion as contributions of funds, property and other assets were made by the county development authorities.

(f) A grant, which may not exceed one hundred thousand dollars, may be made by the West Virginia development office to any county economic development authority which enters into such contracts.

Acts 2001, c. 75, eff. 90 days after April 14, 2001.

§ 7-12-10. Property, bonds and obligations of authority exempt from taxation

The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof or to any officer or employee of the State or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and shall be exempt from taxes.

Acts 1963, c. 29.

Library References

Key Numbers
Taxation ⚷217.
Westlaw Key Number Search: 371k217.

Encyclopedias
C.J.S. Taxation §§ 254, 261.

§ 7-12-11. Participation and appropriations authorized; transfers and conveyances of property

The governing body of a municipality and county commission are hereby authorized and empowered to appoint members of the said authority and the county commission and any municipality therein, or any one or more of them,

jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The county commission of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind acquired by said county commission or municipal corporation for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county commission or municipal corporation deems proper.

Acts 1963, c. 29; Acts 1979, c. 25; Acts 1986, c. 58.

§ 7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts

Contributions may be made to the authority from time to time by the county commission of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the development authority is located. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

Acts 1963, c. 29; Acts 1967, c. 105; Acts 1986, c. 58.

Library References

Key Numbers

Counties ⚷159.
Municipal Corporations ⚷885.
Westlaw Key Number Searches: 104k159; 268k885.

Encyclopedias

C.J.S. Counties § 196.
C.J.S. Municipal Corporations § 1629.

§ 7-12-13. Sale or lease of property; reversion of assets upon dissolution

In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment, either by contract or at public auction, on such terms and conditions as the authority may fix and determine. Upon the dissolution of the authority, all of its assets and property shall revert

to and become the property of the county or municipality for which said authority was created.

The amendment of this section in the year one thousand nine hundred ninety-eight, is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority, and shall be retroactive to the date of the prior enactment of this section.

Acts 1963, c. 29; Acts 1986, c. 58; Acts 1998, c. 105, eff. March 14, 1998.

Library References

Key Numbers

Counties ⚷22.
Municipal Corporations ⚷284(1).
Westlaw Key Number Searches: 104k22; 268k284(1).

Encyclopedias

C.J.S. Counties §§ 41 to 42.
C.J.S. Municipal Corporations § 967.

§ 7-12-14. Employees to be covered by workers' compensation

All employees of the authority eligible thereto are deemed to be within the Workers' Compensation Act of West Virginia, and premiums on their compensation shall be paid by the authority as required by law.

Acts 1963, c. 29; Acts 1986, c. 58.

Cross References

Workers' compensation, generally, see § 23-1-1 *et seq.*

§ 7-12-15. Liberal construction of article

It is the purpose of this article to provide for promotion, development and advancement of the business prosperity and economic welfare of the municipality or county, its citizens and its industrial complex, and this article shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof.

Acts 1963, c. 29; Acts 1986, c. 58.

§ 7-12-16. Provisions severable

The several sections and provisions of this article are severable, and if any section or provisions hereof shall be held unconstitutional, all the remaining sections and provisions of this article shall nevertheless remain valid.

Acts 1963, c. 29.

West's

Annotated Code of West Virginia

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

Chapters 6 to 7
(Including Chapter 7A)

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(2) Make such covenants and do any and all such actions, not inconsistent with the constitution of this state, which may be necessary, convenient or desirable in order to additionally secure the obligations or which tend to make the obligations more marketable according to the best judgment of the county commission or municipality issuing the tax increment financing obligations.

Acts 2002, c. 301, eff. 90 days after March 9, 2002; Acts 2004, c. 238, eff. March 13, 2004.

§ 7-11B-24. Tax increment financing obligations — special fund for repayment

(a) Tax increment financing obligations issued by a county commission or municipality are payable out of the tax increment financing fund created for each development and redevelopment district created under this article.

(b) The county commission or municipality issuing the tax increment financing obligations shall irrevocably pledge all or part of the tax increment financing fund to the payment of the obligations. The tax increment financing fund, or the designated part thereof, may thereafter be used only for the payment of the obligations and their interest until they have been fully paid.

(c) A holder of the tax increment financing obligations shall have a lien against the tax increment financing fund for payment of the obligations and interest on them and may bring suit to enforce the lien.

(d) A county commission or municipality may issue and secure additional bonds payable out of the tax increment fund created for each development or redevelopment district created under this article, which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission or municipality from each such tax increment fund.

Acts 2002, c. 301, eff. 90 days after March 9, 2002; Acts 2004, c. 238, eff. March 13, 2004.

§ 7-11B-26. Excess funds

(a) Moneys received in the tax increment financing fund of the development or redevelopment district in excess of amounts needed to pay project costs and debt service may be used by the county commission or municipality that created the development or redevelopment district for other projects within the district or distributed to the levying bodies as provided in this article.

(b) Upon termination of the district, all amounts in the tax increment financing fund of the district shall be paid over to the levying bodies in the same proportion that ad valorem property taxes on the base value was paid over to those levying bodies for the tax year in which the district is terminated.

Acts 2002, c. 301, eff. 90 days after March 9, 2002; Acts 2004, c. 238, eff. March 13, 2004.

§ 7-11B-27. Computation of local share for support of public schools when tax increment financing is used

For purposes of any computation made in accordance with the provisions of section eleven, article nine-a, chapter eighteen of this code, for a county in which there is tax increment financing in effect pursuant to this article, the assessed value shall be the current assessed value minus the amount of assessed value used to determine the tax increment amount, minus any other adjustments allowed by section eleven of said article.

Acts 2002, c. 301, eff. 90 days after March 9, 2002.

ARTICLE 12

COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES

Section
7-12-7. Powers generally.
7-12-9b. Joint development entities.

§ 7-12-1. Establishment authorized; name; exceptions

Notes of Decisions

In general 1

1. In general

A county court is authorized to create a development authority notwithstanding the existence within the county of a private development corporation. 55 W.Va. Op.Atty.Gen. 187 (November 9, 1973) 1973 WL 159175.

County court authorized to issue bonds for acquiring industrial plants; can act with federal organizations in advancement of industrial development; may transfer county property for adequate consideration; may not condemn private property for industrial development; is not prohibited from using county finances as matching funds. 53 W.Va. Op.Atty.Gen. 276 (August 15, 1969) 1969 WL 100559.

County courts may appropriate public funds for use by local public development authorities. 51 W.Va. Op.Atty.Gen. 759 (April 4, 1966) 1966 WL 87473.

§ 7-12-7. Powers generally

(a) The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex, including, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage and maintain such buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide such services, such as barber shops, newsstands, drugstores and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (6) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (7) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (8) to acquire real property by gift, purchase or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the board of directors of the development authority; (9) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, on such terms as the authority shall determine and give such security therefor as shall be

requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a "governing body" within the definition of that term as used in said article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The amendment of this section enacted in the year one thousand nine hundred ninety-eight is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority and shall be retroactive to the date of the prior enactment of this section.

(c) Notwithstanding any provision of this code to the contrary, any development authority participating in the Appalachian Region Interstate Compact pursuant to chapter seven-a of this code may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an authority. Any development authority or member locality may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement for interstate cooperation for economic and workforce development authorized by law. The obligations of the parties to any such agreement shall not be debt within the meaning of section eight, article X of the Constitution of West Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but does not require any other approval.

(d) "Member localities" means the counties, municipalities or combination thereof which are members of an authority.

Acts 1963, c. 29; Acts 1972, c. 25; Acts 1998, c. 105, eff. March 14, 1998; Acts 2007, c. 58, eff. June 8, 2007.

§ 7-12-9b. Joint development entities

(a) The Legislature hereby finds and declares that the citizens of this state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county governing bodies, municipal governing bodies and county and municipal development authorities should be authorized to organize and jointly own all of the partnership, ownership and membership interests in a partnership, corporation or limited liability company for the sole purpose of undertaking jointly through their joint ownership of or membership in the partnership, corporation or limited liability company any project or projects that an authority established pursuant to this article would be permitted to undertake.

(b) Any combination of two or more county governing bodies, municipal governing bodies, municipal development authorities or county development authorities may jointly form and hold all of the partnership, ownership or membership interests in a partnership, corporation or limited liability company, the sole purpose of which is to develop and own one or more joint economic development projects (for purposes of this section, a "joint development entity"). No person or entity other than a county governing body, municipal governing body, municipal development authority or county development authority may own any ownership or membership interest in a joint development entity. Any existing partnership, corporation or limited liability company is a joint development entity on and after the effective date of this section if: (I) It was organized for the purposes described in this subsection prior to the effective date of this section; and (ii) the partnership, ownership or membership interests in it meet the requirements of this subsection on and after the effective date of this section.

(c) To the extent consistent with and not prohibited by or in conflict with the restrictions and limitations on, or the rights and attributes of, a joint development entity set forth in this section, the applicable general law governing partnerships, corporations or limited liability companies govern the organization, existence, duration, powers, governance and dissolution of

a joint development entity and the rights and responsibilities of the partners, owners or members of a joint development entity.

(d) A joint development entity is a public corporation and a political subdivision and instrumentality of its partners, owners or members and has the powers, rights and privileges of an authority set forth in sections seven, eight, nine, ten, eleven, twelve and fourteen of this article in addition to those granted to partnerships, corporations and limited liability companies under applicable general law.

(e) For West Virginia tax purposes, a joint development entity is a political subdivision of the State of West Virginia and is exempt from all state and local taxation and all real and personal property owned by a joint development entity, or which the joint development entity may acquire to be leased, sold or otherwise disposed of, is exempt from taxation by the state or any county, municipality or other levying body as public property.

Acts 2005, c. 57, eff. 90 days after April 4, 2005. Acts 2008, c. 44, eff. June 6, 2008.

§ 7-12-11. Participation and appropriations authorized; transfers and conveyances of property

Notes of Decisions

In general 1

1. In general

A county court may transfer real property to a county development authority without consideration. 55 W.Va. Op.Atty.Gen. 245 (April 10, 1974) 1974 WL 174287.

ARTICLE 13

ECONOMIC OPPORTUNITY PROGRAMS

§ 7-13-6. Membership and participation in community action program organizations

Notes of Decisions

In general 1
Federal programs 2

1. In general

County Board of Education's governmental immunity extends to "Operation Headstart"; may use schools, buses; procure transportation liability insurance. 51 W.Va. Op.Atty.Gen. 282 (April 29, 1965) 1965 WL 92438.

2. Federal programs

County boards of education may legally establish "Headstart Programs", using public school facilities therefor. 52 W.Va. Op.Atty.Gen. 529 (October 31, 1967) 1967 WL 93431.

§ 7-13-9. Accountability of funds

Notes of Decisions

In general 1

1. In general

Although not mandatory, a county court should maintain a proper system for the accounting of funds contributed by it to a community action program. 55 W.Va. Op.Atty.Gen. 287 (June 4, 1974) 1974 WL 174300.

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 16 OF THE WEST VIRGINIA CODE, AND CHAPTER 8, ARTICLE 16 OF THE 2010 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on
February 23, 2011

Natalie E. Tennant

Secretary of State

ARTICLE 16

MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING

Part I—Definitions; Authorization of Municipal Public Works.

Section
8-16-1. Definitions.
8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.
8-16-3. Special provisions as to certain municipal public works.

Part II—Control of Governing Body or Board.

8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.
8-16-4a. Additional special provisions as to motor vehicle parking facilities.
8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

Part III—General Powers and Authority.

8-16-5. Powers of board.
8-16-6. Preliminary expenses.
8-16-7. Ordinance for construction, etc., of works.

Part IV—Right of Eminent Domain.

8-16-8. Right of eminent domain.

Part V—Revenue Bond Financing.

8-16-9. Bonds for improvements, etc., of works.
8-16-10. Items of expense included in cost of works.
8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.
8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.
8-16-13. Obligations not to bind municipal official or officer or member of board personally.
8-16-14. Additional bonds for improvements, etc., of works.
8-16-15. How proceeds of bonds applied.
8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Part VI—Imposition of Rates or Charges.

8-16-18. Rates, fees or charges for services rendered by works.
8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.
8-16-19. Appeal to public service commission from rates fixed.

Part VII—Accounting System and Records.

8-16-20. Accounting system; yearly audit; custodian of funds.

Part VIII—Rates or Charges for Municipalities.

8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

Section

Part IX—Liens and Protection of Bondholders.

8-16-22. Statutory mortgage lien upon works created.
8-16-23. Acquisition of property on which lien exists.
8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

Part X—Construction; Extraterritorial Jurisdiction.

8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.
8-16-26. Construction of power and authority conferred.
8-16-27. Article liberally construed.
8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

PART I—DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS

§ 8-16-1. Definitions

As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(a) "Municipal public works" or "works" or "projects" means the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, stormwater systems and associated stormwater management program, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities considered necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall also mean any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental

appurtenances and equipment in connection with any one or more of the above.

(b) "Stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater systems" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(c) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and shall include, but not be limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term " stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1935, c. 68, § 1; Acts 1945, c. 90; Acts 1951, c. 136; Acts 1955, c. 121; Acts 1959, c. 116; Acts 1961, c. 100; Acts 1969, c. 86; Acts 1981, c. 164; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Cross References

Creation by charter provision of certain independent city boards, home rule powers for cities, see § 8-12-3.
General powers of every municipality and its governing body, see § 8-12-5.
Hotel occupancy tax, payment on bonds, see § 8-13-3.

Notes of Decisions

Construction and application 1
Municipal public works 3
Ordinances 4
Presumptions and burden of proof 5
Title of act 2

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1. Construction and application

The requirement of the act conferring authority on a municipality to construct a flood control system, that public works conducted thereunder shall be self-sustaining, is not operative, where the work, like a flood wall, is incapable of producing an operating revenue. Acts 1935, c. 68. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Levees And Flood Control ⟹ 22

2. Title of act

The title, "An Act to authorize municipalities to establish * * * municipal public works and to defray the cost of such construction * * * by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," having clearly expressed the principal object to authorize municipal public works, words descriptive of details ancillary thereto should not be narrowly defined. Acts 1935, c. 68; Const. art. 6, § 30. Duling Bros. Co. v. City

of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⟹ 123(3)

The title, "An Act to authorize municipalities to establish * * * municipal public works and to defray the cost of such construction * * * by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," contemplates special assessments, or charges for the service or benefit from a flood wall. Acts 1935, c. 68; Cost. art. 6, § 30. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⟹ 123(3)

3. Municipal public works

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 911

The words "automobile parking buildings" as used in the statute authorizing municipalities to construct and operate municipal public works and to pay therefor, mean automobile parking facilities, and include an automobile lot equipped with a 95 foot elevator for use in its operation, and an issue of revenue bonds authorized by an ordinance duly enacted as provided by the statutes, was valid. Act 1935, c. 68, as amended. State ex rel. Holbert v. Robinson, 1950, 59 S.E.2d 884, 134 W.Va. 524. Municipal Corporations ⟹ 276

The paving or repaving of a public street in a municipality is a "municipal public work" which municipality is authorized to construct by statute providing for issuance of revenue bonds for construction of such work. Acts 1935, c. 68. City of Moundsville v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⟹ 269(2)

4. Ordinances

The purpose of ordinances required by statute authorizing municipalities to establish and maintain municipal public works and defray cost thereof by issuing revenue bonds is to inform residents and taxpayers of the municipalities concerning outlay by them and expected returns from special assessment to be laid pursuant to the statute. Acts 1935, c. 68. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⟹ 301

The statute requiring municipal ordinance authorizing construction of public work to set forth estimated cost thereof refers to the cost of the proposed work to the municipality, and not to other contributions. Acts 1935, c. 68, § 6. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⟹ 303(1)

5. Presumptions and burden of proof

In absence of contrary showing, public improvement is presumed to create a special benefit, and one attacking validity of assessment therefor has burden of establishing invalidity thereof. State ex rel. City of Huntington v. Heffley, 1944, 32 S.E.2d 456, 127 W.Va. 254. Municipal Corporations ⟹ 484(1)

§ 8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs

Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, rights-of-way, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties: Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by

any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article.

Acts 1935, c. 68, § 2; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⟹265.
Westlaw Key Number Search: 268k265.

Encyclopedias
C.J.S. Municipal Corporations § 958.

Notes of Decisions

Injunctive relief 4
Lease-purchase agreements 1
Refinancing 3
Revenue bonds 2

1. Lease-purchase agreements

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 911

Charleston Building Commission had authority to enter into lease-purchase agreement with state whereby commission would purchase and refurbish building, state would pay rent to commission in amount sufficient to discharge bonds or certificates of participation, and state would have option to purchase building from commission upon repayment of bonds or other such obligations. Code, 8-12-5(36), 8-33-4(f); Charleston, W.Va., Charter § 59. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 223

City of Charleston, in its distinctive role as capital of West Virginia, may provide property to state to be used as a state capitol or for other public buildings; this special authority extends to Charleston Building Commission and enables it, also, to provide property for state purposes. Code, 8-12-5(36), 8-33-4(f); Charleston, W.Va., Charter § 59. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 225(1)

2. Revenue bonds

State Constitution's prohibition against incurring excessive debt by municipal corporations was not violated by Charleston Building Commission's proposal to finance acquisition of building to be leased to state through issuance of bonds or certificates of participation. Const. Art. 10, § 8; Code, 8-33-5. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 864(3)

Charleston Building Commission has authority to issue bonds or certificates of participation to finance its acquisition and renovation of building that it intends to lease to state. Code, 8-33-4(h-j). State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 906

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of defraying part of expense of completing construction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935 c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

A provision in ordinance of city of Grafton authorizing issuance of series of revenue bonds for completion of hospital building owned by city, which provides that bonds are to be a statutory mortgage lien on hospital when completed and on equipment and future additions thereto, and which pledges all of net profit from hospital for payment of the revenue bonds and interest thereon, is valid. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 8-4A-22, as added by Laws 1935, c. 68, § 22. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 917(1)

General obligation bonds issued by city of Grafton, proceeds of which were to be used by defraying a part of expenses of completing hospital owned by city, were valid, in view of manner in which election authorizing issuance of bonds was conducted, and that validity of bond issue was approved by attorney general

and copy of his approval published in two newspapers of opposite politics and that no petition praying that attorney general's action be reversed was filed. Code 1931, 13-1-27. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⚷ 918(4)

A provision in ordinance of city of Grafton authorizing issuance by municipality of revenue bonds to aid in completion of hospital owned by municipality, to effect that municipality should pay legally established rates for use of hospital, did not create an "indebtedness" against the municipality within statutory or constitutional inhibition against creation of public debt. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 13-1-3; Const. art. 8, § 10. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⚷ 864(4)

Revenue bonds issued by municipality to aid in completion of hospital owned by municipality pursuant to act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works were not an "indebtedness" of municipality within statutory or constitutional inhibition against creation of public debt. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 13-1-3; Const. art. 8, § 10. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⚷ 864(4)

3. Refinancing

The statute authorizing municipalities to refinance "any enterprise" as therein defined does not authorize refinancing as a single issue three separate bond issues for three separate flood wall units constructed under separate ordinances and representing a variation in construction and maintenance costs, rates chargeable, etc. Acts 1937, c. 120; Acts 1935, c. 68; Const. art. 10, § 1; Code, 2-2-10. State ex rel. City of Huntington v. Heffley, 1944, 32 S.E.2d 456, 127 W.Va. 254. Levees And Flood Control ⚷ 34

4. Injunctive relief

Injunction would not lie to restrain enforcement of municipal ordinance transferring control of city's floodwall system from board to another local agency; municipality was authorized by statute to maintain control over municipal public works, including flood control systems and flood walls, petition for injunction did not indicate that ordinance would cause irreparable injury, and declaratory judgment action would be adequate remedy at law. Code, 8-16-1, 8-16-2, 8-16-4. Perdue v. Ferguson, 1986, 350 S.E.2d 555, 177 W.Va. 44. Injunction ⚷ 85(1)

§ 8-16-3. Special provisions as to certain municipal public works

When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.

When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

When the cost of the municipal public works is to be paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds.

Acts 1951, c. 137; Acts 1953, c. 134; Acts 1955, c. 122; Acts 1963, c. 123; Acts 1969, c. 86.

Library References

Key Numbers

Municipal Corporations ⚷268.

Westlaw Key Number Search: 268k268.

Notes of Decisions

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Parking meters 3

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1. Financing

Fines generated by a municipal court may be dedicated to retire a debt created for a bond issue for not more than twenty years which finances the construction of a municipal building to the extent that said municipal building constitutes a jail or facility; the use or establishment of a jail which houses municipal prisoners. Magro, Op.Atty.Gen., June 7, 1988.

2. Parking facilities

Under statutes, municipal corporation which has appointed commission to supervise and control automobile parking facilities, when constructed, and has adopted bond ordinance to defray cost of construction, is empowered to pledge revenues derived from off street parking meters to help finance construction of automobile parking facilities, including payment of principal and interest on revenue bonds issued for purpose of financing construction of proposed automobile parking facility. Code, 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Municipal Corporations ⚷ 950(15)

Statute to effect that municipality shall have authority to establish automobile parking facilities and to create commission for supervision of such facilities and to pay to such commission revenue derived from parking meters or other parking facilities, unless otherwise pledged to pay for such meters or parking facilities, had as its underlying purpose alleviation of congested parking conditions in municipalities, and was enacted by Legislature in exercise of its police power. Code, 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Municipal Corporations ⚷ 276

3. Parking meters

Though on-street parking meters are designed to aid in controlling traffic on public streets of municipality, in exercise of police power, and fees may be employed to defray expense of regulatory service, fee charged may not be used for purely revenue raising purposes. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Automobiles ⚷ 5(3)

In absence of affirmative showing that revenue to be derived from off-street parking facilities and curb line parking meters exceeded cost of constructing and operating off-street parking facility, and on-street parking meters, and principal and interest on revenue bonds issued for purpose of financing such facilities, municipal bond ordinance to finance construction of off-street parking facilities by revenues derived from off-street parking facilities and from curb line parking meters, was not invalid as revenue raising measure. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Automobiles ⚷ 7

4. Mandamus

Where council of municipal corporation enacted valid ordinance providing for construction of public automobile parking lots, to be financed by revenue bonds to be issued over signature of mayor of municipality, mayor had mandatory administrative duty enforcible in mandamus, to sign revenue bond, and to perform other administrative acts to bring about issuance of bonds, and further construction of proposed parking lot. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Mandamus ⚷ 90

PART II—CONTROL OF GOVERNING BODY OR BOARD

§ 8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said committee, board or commission to exercise such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for by ordinance or ordinances. Any such committee, board or commission shall consist of the number of members fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection and appointment of the members of any such board or commission shall be stated in such ordinance or ordinances. The members of any such board or commission appointed by the governing body or bodies shall be chosen without regard to their political affiliations, but with regard to their business and professional experience or standing as citizens in the community. All compensation and expenses, including attorney's fees, of such committee, board or commission shall be paid solely from funds provided under the authority of this article. Any such committee, board or commission shall have the power to establish bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term "board" shall be construed to mean the governing body or committee composed of all or a portion of the governing body when only one municipality is involved, or a board or commission appointed by the governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as the case may be. When two or more municipalities take joint action under the provisions of this article each governing body shall appoint to the board the number of members which the governing bodies have agreed shall be appointed by each such governing body.

The governing body or bodies also, in its or their discretion, may provide by ordinance or ordinances for the leasing of a municipal public works and provide for the custody, maintenance and operation thereof by a lessee in accordance with the provisions of such ordinance or ordinances and lease

contract executed pursuant thereto: Provided, That the lessee shall pay to the municipality or municipalities for the use and occupancy of such municipal public works so leased an amount sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section seventeen of this article.

Acts 1935, c. 68, §§ 3, 21; Acts 1937, c. 55; Acts 1961, c. 100; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⟹284(1).
Westlaw Key Number Search: 268k284(1).

Encyclopedias
C.J.S. Municipal Corporations § 967.

Notes of Decisions

Board, commission or committee 2
Injunctive relief 4
Leases 3
Title of act 1

1. Title of act

The title, "An Act to authorize municipalities to establish * * * municipal public works and to defray the cost of such construction * * * by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," having clearly expressed the principal object to authorize municipal public works, words descriptive of details ancillary thereto should not be narrowly defined. Acts 1935, c. 68; Const. art. 6, § 30. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⟹ 123(3)

The title, "An Act to authorize municipalities to establish * * * municipal public works and to defray the cost of such construction * * * by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," contemplates special assessments, or charges, for the service or benefit from a flood wall. Acts 1935, c. 68; Cost. art. 6, § 30. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⟹ 123(3)

2. Board, commission or committee

Individual who has been appointed chairman pro tem of municipal building commission possesses same duties and responsibilities as regularly and duly elected chairman of that commission would possess. Code, 8-33-4. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 192

A national bank could be regarded as a "committee" under act authorizing municipalities to construct and maintain flood control systems, and placing the construction of a public work under the supervision of a "board, commission, or committee," but bank's decision as to reasonableness of agreed price for land needed for project is not final. Acts 1935, c. 68. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Levees And Flood Control ⟹ 8

3. Leases

Generally, a municipality may lease property which it holds in its proprietary capacity but the power to lease does not include the power to discriminate against members of a minority race in the exercise of their constitutional rights. U.S.C.A.Const. Amends. 11-15. Lawrence v. Hancock, 1948, 76 F.Supp. 1004. Constitutional Law ⟹ 220.5(1)

Where municipality constructed swimming pool with public funds under statutory authority, the municipality, if pool is operated must operate it itself or, if leased, must see that pool is operated without discrimination against citizens on account of race or color. Code W.Va. 8-4A-1 et seq., 8-4A-21, 8-14-1 et seq., 13-1-8, 13-1-22; U.S.C.A.Const. Amend. 14. Lawrence v. Hancock, 1948, 76 F.Supp. 1004. Constitutional Law ⟹ 217(3)

Where city constructed swimming pool with public funds and leased pool to private association without consideration under lease which did not permit association to make profits from operation of pool but required it to use all net revenue to improve and develop pool and to provide additional recreational facilities, city could not by such lease relieve itself of obligation to see that constitutional right of all citizens to equal protection of law in use of pool was preserved. Code W.Va. 8-4A-1 et seq., 8-14-1 et seq., 13-1-8, 13-1-22; Const. U.S.C.A.Amend. 14. Lawrence v. Hancock, 1948, 76 F.Supp. 1004. Municipal Corporations ⟹ 721(3)

4. Injunctive relief

Injunction would not lie to restrain enforcement of municipal ordinance transferring control of city's floodwall system from board to another local agency; municipality was authorized by statute to maintain control over municipal public works, including flood control systems and flood walls, petition for injunction did not indicate that ordinance would cause irreparable injury, and declaratory judgment action would be adequate remedy at law. Code, 8-16-1, 8-16-2, 8-16-4. Perdue v. Ferguson, 1986, 350 S.E.2d 555, 177 W.Va. 44. Injunction ⟹ 85(1)

§ 8-16-4a. Additional special provisions as to motor vehicle parking facilities

(a) The legislature hereby finds that the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of many municipalities in this State; that the lack of adequate planning and supervision of the location of parking facilities, the parking of motor vehicles of all kinds and the lack of adequate parking facilities for motor vehicles of all kinds substantially impede the free circulation of traffic in, through and from many municipalities in this State, impede the rapid and effective fighting of fires and disposition of police officers therein, contribute to the location and relocation of commercial and business enterprises outside of urban areas and retard the development of commerce and business within many municipalities in this State, thereby giving rise to urban blight and adversely affecting or threatening to adversely affect the tax base of such municipalities; that such parking crisis can be reduced by such municipalities providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the leasing, particularly on a long-term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the

public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:

(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term "municipal public works" were expressly defined in section one of this article to include pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any municipality or municipalities in erecting or constructing any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility which connects a municipal public works which is a motor vehicle parking facility with a privately owned building or buildings or other privately owned structure or structures shall be paid for by the owner or owners of such building or buildings or such other structure or structures.

Any such lease may be privately negotiated without any public notice or advertising, and any such sale may be a public sale pursuant to the provisions of section eighteen, article twelve of this chapter or such sale may be privately negotiated, notwithstanding the provisions of said section eighteen.

(c) The proceeds received from any lease, sale or payment as provided in this section shall be deemed revenue of the works and used as provided in section seventeen of this article.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is municipally owned and the fact that a lease or sale under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine, article three, chapter eleven of this code.

Acts 1971, c. 99.

Library References

Key Numbers

Municipal Corporations ⚷268.

Westlaw Key Number Search: 268k268.

Notes of Decisions

Condemnation 3
Powers of legislature 2
Validity 1

1. Validity

West Virginia statute authorizing municipalities to lease space in municipally owned parking facilities to private interests, as construed by the West Virginia Supreme Court to authorize sale or lease to private interests of ancillary or incidental space which has as its primary and dominant purpose the conferring of benefits on the public generally, is constitutional on its face and West Virginia law provides adequate means to assure against unconstitutional application should private purpose utilization be allowed to advance beyond the threshold of incidental use. 28 U.S.C.A. §§ 2201, 2202; Code W.Va. 8–16–4a; U.S.C.A.Const. Amend. 14. Washington-Summers, Inc. v. City of Charleston, 1977, 430 F.Supp. 1013. Municipal Corporations ⚷ 722

Exemption from taxation of municipally owned parking facility, some of whose space was being leased to private business, and the bonds and interest which financed the facility did not violate constitutional limitation on exemption from taxation or constitutional requirement that taxation be uniform. Code, 8–16–4a(a); Const. art. 10, §§ 1, 9. State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Taxation ⚷ 193

City's operation of parking facility in which a portion of the parking space was devoted to private business did not violate the State or Federal Constitutions on theory that such facilities were in competition with private persons providing the similar service, thus denying equal protection and taking property for private purposes. Code, 8–16–4a(a); Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law ⚷ 234.6

Statute, which authorizes the creation of municipal parking authorities and which allows for leasing of space within municipal parking lots to private concerns, does not violate state constitutional provisions relating to uniformity of taxation and exemption of certain items from taxation nor does it violate the due process or equal protection guarantees of the State or Federal Constitutions. Code, 8–16–4a(a); Const. art. 3, §§ 9, 10, art. 5, §§ 1, 5; U.S.C.A.Const. Amend. 14. State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law ⚷ 234.6

If any municipal parking facility project is challenged on the constitutional grounds of lack of "public purpose", court must look to an expansive definition of "public purpose" and evaluate the project in terms of the necessity of commercial sale or leasing of space to finance the facility, the degree to which the facility will enhance or implement any plan of urban devel-

opment, and the degree to which the proposed project will enhance the public policy of encouraging economic development and expansion of industry and commerce. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Municipal Corporations ⟹ 267

Although municipally owned parking facility designed for an acknowledged public purpose is constitutional, even though it confers ancillary and incidental benefits upon private persons, a municipally owned parking facility which has, as its primary and dominant purpose, the conferring of private benefits, with only ancillary public benefits, would be an unconstitutional use of the authority conferred on municipalities by the legislature. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Municipal Corporations ⟹ 267

2. Powers of legislature

Public parking is among the public purposes on which the legislature may direct or authorize government action. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. States ⟹ 21

Legislature was entitled to delegate power to municipal corporation to determine the amount of space in a public parking facility which would be leased or sold to private business, commercial or charitable uses, subject to the constitutional limits on a municipality's discretion. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law ⟹ 63(2)

3. Condemnation

A finding that a public condemnor has the right to take property for purposes stated in petition for commencement of condemnation proceedings and enter the property is immediately appealable. Code W.Va. 8-16-4a, 54-2-2, 54-2-5, 54-2-14. Washington-Summers, Inc. v. City of Charleston, 1977, 430 F.Supp. 1013. Eminent Domain ⟹ 253(2)

Failure of petition for commencement of condemnation proceedings to state all uses for which property is intended may be ground for denying the petition. Code W.Va. 8-16-4a, 54-2-2, 54-2-5, 54-2-14. Washington-Summers, Inc. v. City of Charleston, 1977, 430 F.Supp. 1013. Eminent Domain ⟹ 191(3)

§ 8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities

For all purposes of this article, the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the State of West Virginia, the county court of any county of the State of West Virginia, and any agency, board or commission of any thereof, and the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from such motor vehicle parking facility.

Acts 1974, c. 47.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART III—GENERAL POWERS AND AUTHORITY

§ 8-16-5. Powers of board

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction,

reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

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 compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ten thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may consider expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

Acts 1935, c. 68, § 4; Acts 1969, c. 86; Acts 1998, c. 214, eff. 90 days after March 14, 1998; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ⟹328.
Westlaw Key Number Search: 268k328.

Encyclopedias

C.J.S. Municipal Corporations §§ 1027 to 1029.

§ 8-16-6. Preliminary expenses

All necessary preliminary expenses actually incurred by the board of any municipality or municipalities in the making of surveys or estimates of cost and

of revenues, employment of engineers or other employees, the giving of notices, the taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the municipality or municipalities, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works as hereinafter provided.

Acts 1935, c. 68, § 5; Acts 1969, c. 86.

§ 8-16-7. Ordinance for construction, etc., of works

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; (e) contain such provisions as the governing body determines are necessary or desirable with regard to the establishment and setting aside of reserves from the proceeds of such revenue bonds or from the revenues of said works, or from both, and the administration and disposition thereof; and (f) contain such other provisions as may be necessary or proper in the premises. When two or more municipalities take joint action under the provisions of this article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county commission of the county or counties in which the municipalities are located and in the office of the state tax commissioner, and when any such municipality is located in more than one county, the filing for that municipality shall be in the office of the clerk of the county commission in which the major portion of the territory of such municipality is located. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the governing body or each governing body, as the case may be, to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality or each such municipality, as the case may be. The notice to be published with said abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than ten days after the first publication of said abstract and notice and not prior to the last publication of

said abstract and notice, at which time and place all parties and interest may appear before the governing body of the municipality or each such municipality and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of such office. At such hearing all objections and suggestions shall be heard and the governing body or each such governing body shall take such action as it or they shall deem proper in the premises: Provided, That if at any such hearing written protest is filed by thirty percent or more of the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided, however, That in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one opponent, and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body.

Acts 1935, c. 68, § 6; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 193; Acts 1973, c. 89; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Key Numbers

Municipal Corporations ⚷300.
Westlaw Key Number Search: 268k300.

Encyclopedias

C.J.S. Municipal Corporations § 991.

Notes of Decisions

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1. Purposes of ordinances

The purpose of ordinances required by statute authorizing municipalities to establish and maintain municipal public works and defray cost thereof by issuing revenue bonds is to inform residents and taxpayers of the municipalities concerning outlay by them and expected returns from special assessment to be laid pursuant to the statute. Acts 1935, c. 68. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⚷ 301

2. Cost information

Municipal ordinances relating to flood wall project, which set forth the estimated cost of the proposed work to the city, but not the total cost of the project including that assumed by federal government, sufficiently complied with statute requiring such a municipal ordinance to set forth the estimated cost thereof. Acts 1935, c. 68, § 6. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Levees And Flood Control ⚷ 12

The statute requiring municipal ordinance authorizing construction of public work to set forth estimated cost thereof refers to the cost of the proposed work to the municipality, and not to other contributions. Acts 1935, c. 68, § 6. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⚷ 303(1)

3. Repeal of ordinance

Referendum attempting repeal of city ordinance authorizing the issuance of bonds for construction of an incinerator plant under act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works, could not affect the validity of the ordinance when questioned for other reasons by bondholders. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Municipal Corporations ⚷ 108.1

PART IV—RIGHT OF EMINENT DOMAIN

§ 8-16-8. Right of eminent domain

Every such municipality shall have plenary power and authority to condemn any such municipal public works to be acquired, and any land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business, commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four of this code: Provided, That any such municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon any such municipality, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper: Provided, however, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing

privately owned works (other than motor vehicle parking facilities) in operation at the date of the condemnation.

Acts 1935, c. 68, § 7; Acts 1969, c. 86; Acts 1971, c. 99.

Library References

Key Numbers
Eminent Domain ⟹18.
Westlaw Key Number Search: 148k18.

Encyclopedias
C.J.S. Eminent Domain §§ 51, 54.

PART V—REVENUE BOND FINANCING

§ 8-16-9. Bonds for improvements, etc., of works

Whenever any municipality or municipalities now, or hereafter, shall own and maintain and operate any of the works herein referred to, whether constructed, reconstructed, established or acquired under the provisions of this article or not, and shall desire to improve, renovate, extend, enlarge, increase, equip or repair (including replacements) the same, it may issue revenue bonds, under the provisions of this article, to pay for the same, and the procedure therefor, including fixing all rates and the computation of the amount thereof, shall be the same as in this article provided for the issuance of bonds for the construction, reconstruction, establishment or acquisition of any such works in or by any such municipality which has not theretofore owned and maintained and operated any such works: Provided, That no existing obligations or rights shall be affected or impaired thereby.

Acts 1935, c. 68, § 8; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⟹911.
Westlaw Key Number Search: 268k911.

Encyclopedias
C.J.S. Municipal Corporations § 1649.

Notes of Decisions

In general 2
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Construction and application 1
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1. Construction and application

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹ 911

2. In general

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of defraying part of expense of completing construction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

City of Wheeling held authorized to issue bonds for constructing bridge across river within corporate limits (Acts 1923, c. 14; Charter of City of Wheeling, §§ 31, 83, 84). State v. Steen, 1928, 145 S.E. 602, 106 W.Va. 325. Municipal Corporations ⟹ 911

3. Funding sources

Fines generated by a municipal court may be dedicated to retire a debt created for a bond issue for not more than twenty years which finances the construction of a municipal build-

ing to the extent that said municipal building constitutes a jail or facility, the use or establishment of a jail which houses municipal prisoners. Magro, Op.Atty.Gen., June 7, 1988.

4. Validity of bonds

The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935 c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

5. Calling of bonds

Portion of city's ordinance requiring city to call revenue bonds it issued when a certain surplus existed in sinking fund from which payments were to be made was invalid. Code, 8-16-9 et seq., 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⟹ 953

§ 8-16-10. Items of expense included in cost of works

The cost of the works shall be deemed to include the cost of construction, reconstruction, establishment or acquisition thereof, the cost of all land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor or thereto and for the improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) determined upon; the interest upon bonds prior to and during the project and for six months after completion thereof; the amount of any reserve funded from the proceeds of bonds; engineering and legal expenses; expenses for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expenses; and such other expenses as may be necessary or incident to the financing herein authorized, the project, the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Acts 1935, c. 68, § 9; Acts 1969, c. 86; Acts 1973, c. 89.

Library References

Key Numbers

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

Encyclopedias

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

§ 8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation

Nothing in this article contained shall be so construed as to authorize or permit any municipality or municipalities to make any contract or incur any obligation of any kind or nature, except such as shall be discharged or payable solely from the funds provided under the authority of this article. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the municipality or municipalities, the principal and interest of which bonds shall be payable solely from the special fund for such payment herein provided for, and said bonds shall not in any respect be a corporate indebtedness of such municipality or municipalities. All such bonds and the interest thereon, and all properties and revenues and income derived from such

municipal public works, shall be exempt from all taxation by this State, or any county, municipality, political subdivision or agency thereof. All of the details of such bonds and the issuance thereof shall be determined by ordinance of the governing body or bodies.

Acts 1935, c. 68, § 10; Acts 1969, c. 86.

Library References

Key Numbers

Municipal Corporations ⟹950(15).
Taxation ⟹218.
Westlaw Key Number Searches: 268k950(15); 371k218.

Encyclopedias

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

Notes of Decisions

Constitutional provisions 1

1. Constitutional provisions

State Constitution's prohibition against incurring excessive debt by municipal corporations was not violated by Charleston Building Commission's proposal to finance acquisition of building to be leased to state through issuance of bonds or certificates of participation. Const. Art. 10, § 8; Code, 8-33-5. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⟹864(3)

Provision of State Constitution prohibiting state from contracting debt except under certain circumstances is not designed to prohibit state or state's agencies from issuing revenue bonds that are to be liquidated from contracts requiring rental payments from another state agency or from contracts for necessary services such as utilities; nor does that constitutional provision preclude issuance of revenue bonds which are to be redeemed from special fund. Const. Art. 10, § 4. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. States ⟹148

§ 8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, either coupon or registered, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the State. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth

in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven hereof. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this State. The bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than thirteen percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definitive bonds, interim certificates may, under like restrictions, be issued, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1935, c. 68, § 11; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Key Numbers

Municipal Corporations ⟹922.
Westlaw Key Number Search: 268k922.

Notes of Decisions

In general 2
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1. Constitutional provisions

Revenue bonds and interest coupons provided for by city ordinance providing for construction of proposed bridge and tunnel facility did not constitute an "indebtedness" of city or State Road Commission within meaning of section of the constitution limiting bonded "indebtedness" of municipalities. Code, 17-17-30 et seq.; Const. art. 10, § 8. State ex rel. Anderson v. Dailer, 1955, 85 S.E.2d 656, 140 W.Va. 513. Municipal Corporations ⟹ 916

Under statute providing that bonds issued or given as security in connection with construction of a toll bridge will be payable solely out of revenues of such bridge, where each bond contained a provision to effect that municipality was not obligated to pay bond or interest thereon except from net revenues of bridge, and that

credit or taxing power of the municipality was not deemed to be pledged, the bond issue was not violation of the constitutional limitation on the bonded indebtedness of a municipality. Code, 17-17-32, 33; Const. Art. 10, § 8. State ex rel. Knight v. Hanway, 1951, 67 S.E.2d 1, 136 W.Va. 219. Municipal Corporations ⟹ 916

2. In general

City located on or near state boundary and confronted with necessity of purchasing property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⟹ 919

Provisions of statute relating to issuance of municipal bonds constitute integral parts of bonds regardless of whether included therein (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 923

That special tax rate may be insufficient to pay improvement bonds and interest held not to invalidate issue. Sexton v. Lee, 1925, 130 S.E. 437, 100 W.Va. 389. Municipal Corporations ⟹ 919

That special rate of tax levied to pay bonds may be insufficient to pay them and interest will not invalidate issue, in view of fact that bonds are to raise money to carry on improvement anticipatory of repayment to city by assessments against abutting property, as city, in view of Barnes' Code 1923, c. 47, § 49c(1)-49c(18), may rely to some extent on such payments. Sexton v. Lee, 1925, 130 S.E. 437, 100 W.Va. 389. Municipal Corporations ⟹ 919

3. Validity of ordinance

Portion of city's ordinance requiring city to call revenue bonds it issued when a certain surplus existed in sinking fund from which payments were to be made was invalid. Code, 8-16-9 et seq., 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⟹ 953

4. Bond limits

In an ordinance the authorization of bonds not to exceed $6,000 is equivalent, in legal effect, to fixing the amount of such bonds at such sum. Knight v. Town of West Union, 1898, 32 S.E. 163, 45 W.Va. 194. Municipal Corporations ⟹ 917(1)

A municipal ordinance which authorizes the issuance of bonds for waterworks to an amount not exceeding $6,000 empowers the council to issue to the amount of $6,000, if necessary, for the purpose expressed in the ordinance, otherwise not. Knight v. Town of West Union, 1898, 32 S.E. 163, 45 W.Va. 194. Municipal Corporations ⟹ 916

5. Redemption

Only municipality, whose board can exercise option to redeem, can call bonds before maturity; it cannot, by its ordinance, give redemption decision to bondholders. Code, 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⟹ 953

§ 8-16-13. Obligations not to bind municipal official or officer or member of board personally

No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires.

Acts 1935, c. 68, § 12; Acts 1969, c. 86.

§ 8-16-14. Additional bonds for improvements, etc., of works

The governing body or bodies may provide by the said ordinance or ordinances authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said ordinance or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed neces-

sary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine of this article.

Acts 1935, c. 68, § 13; Acts 1969, c. 86.

§ 8-16-15. How proceeds of bonds applied

All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Acts 1935, c. 68, § 14; Acts 1969, c. 86.

Library References

Key Numbers

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

Encyclopedias

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

§ 8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee

In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust indenture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the State. The ordinance or ordinances authorizing the issuance of the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality or municipalities and the board in relation to the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase and equipment of the project and the repair (including replacements), maintenance, operation and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the project shall be contracted for, carried out and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or such trustee, or both. Except as in this article otherwise provided, the governing body or bodies may provide by ordinance or ordinances or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository, as such body or bodies may determine for the custody thereof, and for the method of distribu-

tion thereof, with such safeguards and restrictions as such body or bodies may determine.

Acts 1935, c. 68, § 15; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⚷919.
Westlaw Key Number Search: 268k919.

Encyclopedias
C.J.S. Municipal Corporations § 1661.

§ 8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserves out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty, article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the

general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the state sinking fund commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

Acts 1935, c. 68, § 16; Acts 1969, c. 86; Acts 1971, c. 99; Acts 1973, c. 89.

Library References

Key Numbers

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

Encyclopedias

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

Notes of Decisions

In general 1

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1. In general

City of Charleston was not authorized to transfer to general fund any monies in parking system revenue fund until all bonds and indebtedness in connection with parking system had been fully paid off and discharged. Code, §§ 8-13-20, 8-16-17, 8-16-20. State ex rel. City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Municipal Corporations ⟹ 887

Where enabling act specified purposes for which revenue from operation of municipal parking system could be used, maxim expressio unius est exclusio alterius was applicable. Code, § 8-16-17. State ex rel. City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Statutes ⟹ 195

PART VI—IMPOSITION OF RATES OR CHARGES

§ 8-16-18. Rates, fees or charges for services rendered by works

The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use and services rendered, or the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust rates, fees or charges from time to time.

When two or more municipalities take joint action under the provisions of this article, the rates, fees or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or

municipalities as to the amount of the rates, fees or charges, and such rates, fees or charges may be the same with respect to each municipality, or they may be different.

Rates, fees or charges heretofore or hereafter established and maintained for the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and the governing body is reasonably assured that the works will be completed and placed in operation without unreasonable delay.

All rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund.Revenues collected pursuant to the provisions of this section are considered the revenues of the works. No such rates, fees or charges shall be established until after a public hearing at which all the users of the works and owners of the property served, or to be served thereby, and others interested, shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the proposed ordinance fixing the rates, fees or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publishing the same as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required.

After such hearing the ordinance establishing rates, fees or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest.

The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or adjustment of rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as provided in this section. The aggregate of the rates, fees or

charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments.

If any rate, fee or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent and reasonable attorney's fees, may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of rates, fees or charges due for services rendered, such rates, fees or charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under section seven of this article, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to pay for the same when due, the board may discontinue such service without notice.

Acts 1935, c. 68, § 17; Acts 1949, c. 85; Acts 1967, c. 105; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ⟹460, 530.
Westlaw Key Number Searches: 268k460; 268k530.

Encyclopedias

C.J.S. Municipal Corporations §§ 1260 to 1266, 1409.

Notes of Decisions

In general 1
Charges 2
Estoppel 5
Lien on land 3
Relief from assessments 4

1. In general

A municipal special assessment for the cost of street paving laid under statute authorizing municipal authorities to provide for retirement of revenue bonds issued to pay for public works by imposing charges to be paid by persons using the work did not create a "contractual obligation" as against the owners of abutting lots that could be used as a basis of recovery in a notice of motion proceeding. Acts 1935, c. 68; Code 1931, 56-2-6. City of Moundsville v. Brown, 1943, 25 S.E.2d 900, 125 W.Va. 779. Judgment ⟹ 184

Under statute authorizing municipalities to pay for public works by issuing revenue bonds secured by the revenues of such systems, creation and levying of special assessments for the cost of such works is an exercise of the state's taxing power notwithstanding that the cost thereof must be provided by means "other than taxation". Acts 1935, c. 68. City of Moundsville v. Brown, 1943, 25 S.E.2d 900, 125 W.Va. 779. Municipal Corporations ⟹ 406(1)

2. Charges

The word "charges", as used in statute authorizing municipal authorities to provide for retirement of revenue bonds issued to pay for public works by imposing charges to be paid by persons using the work or receiving the services thereof, includes a special assessment against realty. Acts 1935, c. 68, § 17. City of Moundsville v. Brown, 1943, 25 S.E.2d 900, 125 W.Va. 779. Municipal Corporations ⟹ 406(1).

3. Lien on land

The expense of a municipal public work project consisting of paving or repaving a municipal street may be prorated as to land abutting thereon, and such pro rata part of the expense may be made a lien on abutting land and a personal obligation of the owner thereof. Acts 1935, c. 68. City of Moundsville v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⟹ 465

4. Relief from assessments

Irregularities and errors and other like defenses in actions of city council connected with authorization of public works project, the construction thereof, and establishment of rates and charges thereunder could not be resorted to by property owners for relief against assessments after improvements had been made. Acts 1935, c. 68, §§ 6, 17. City of Moundsville

v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⟹ 319

5. Estoppel

Where property owners did not exercise opportunity to test validity of ordinance authorizing municipal public works or ordinance fixing rates and charges but stood by and permitted revenue bonds to be issued and sold, improvements to be made, and proceeds of bonds to be expended in payment thereof, without protest or objection, in suit by municipality to recover assessments, owners could be heard only on matters which if established would render either proceedings having to do with construction of work or those establishing the rates absolutely void. Acts 1935, c. 68, §§ 6, 17. City of Moundsville v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⟹ 562(1)

§ 8–16–18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission

In addition to the rates or charges authorized to be pledged and expended for the security and payment of bonds as provided in this article, the governing body issuing such bonds shall have plenary power and authority to pledge and expend for the security and payment of such bonds all, or any part, of the revenues which are derived from the hotel occupancy tax which a municipality may impose pursuant to section three, article thirteen of this chapter and which are specifically dedicated by such governing body for any purpose or purposes set forth in section three, article thirteen of this chapter. All such sums which are so pledged shall be deemed "revenues of the works" for all purposes of the provisions of this article. The governing body shall also have the power and authority to contribute all, or any part of, the revenues derived from said hotel occupancy tax to a building commission created by such governing body pursuant to article thirty-three, chapter eight of this code for such lawful purposes which such building commission shall determine and which are set forth in section three, article thirteen of this chapter, including payment of revenue bonds issued by such building commission.

Acts 1976, c. 82.

Library References

Key Numbers
Municipal Corporations ⟹919.
Westlaw Key Number Search: 268k919.

Encyclopedias
C.J.S. Municipal Corporations § 1661.

§ 8–16–19. Appeal to public service commission from rates fixed

If any party in interest is dissatisfied with the rates fixed under the provisions of the immediately preceding section of this article, such party shall have the right to appeal to the public service commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the public service commission.

Acts 1935, c. 68, § 18; Acts 1969, c. 86.

Library References

Key Numbers
Public Utilities ⟹146.
Westlaw Key Number Search: 317Ak146.

Encyclopedias
C.J.S. Public Utilities § 66.

PART VII—ACCOUNTING SYSTEM AND RECORDS

§ 8-16-20. Accounting system; yearly audit; custodian of funds

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen of this article.

Acts 1935, c. 68, § 19; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⟹885.
Westlaw Key Number Search: 268k885.

Encyclopedias
C.J.S. Municipal Corporations § 1629.

Notes of Decisions

In general 1

1. In general

City of Charleston was not authorized to transfer to general fund any monies in parking system revenue fund until all bonds and indebtedness in connection with parking system had been fully paid off and discharged. Code, §§ 8-13-20, 8-16-17, 8-16-20. State ex rel. City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Municipal Corporations ⟹ 887

PART VIII—RATES OR CHARGES FOR MUNICIPALITIES

§ 8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them

(a) The municipality or municipalities issuing such bonds shall be subject to the same rates, fees or charges established as provided in this article, or to rates, fees or charges established in harmony therewith, for service rendered to the municipality or municipalities, and shall pay such rates, fees or charges, when due, from corporate funds, and the same shall be considered to be a part

of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue.

(b) The municipality or municipalities and any county, state and federal government served by the services of the stormwater system shall be subject to the same rates, fees or charges established as provided in this article for stormwater services, or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity and shall pay such rates, fees or charges, when due, from corporate funds, and the same is considered to be a part of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1935, c. 68, § 20; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers
Municipal Corporations ⚷715.
Westlaw Key Number Search: 268k715.

Encyclopedias
C.J.S. Municipal Corporations § 1540.

PART IX—LIENS AND PROTECTION OF BONDHOLDERS

§ 8-16-22. Statutory mortgage lien upon works created

There shall be and there is hereby created and granted a statutory mortgage lien upon such municipal public works constructed, reconstructed, established, acquired, improved, renovated, extended, enlarged, increased, equipped or repaired (including replacements) under the provisions of this article, which shall exist in favor of the holder of said bonds, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such municipal public works shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Acts 1935, c. 68, § 22; Acts 1969, c. 86.

Library References

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

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

Notes of Decisions

In general 1

1. In general

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of defraying part of expense of completing construction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. Warden v. City of

Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

A provision in ordinance of city of Grafton authorizing issuance of series of revenue bonds for completion of hospital building owned by city, which provides that bonds are to be a statutory mortgage lien on hospital when completed and on equipment and future additions thereto, and which pledges all of net profit from hospital for payment of the revenue bonds and interest thereon, is valid. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 8-4A-22, as added by Laws 1935, c. 68, § 22. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 917(1)

§ 8-16-23. Acquisition of property on which lien exists

No property shall be acquired under the provisions of this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

Acts 1935, c. 68, § 23; Acts 1969, c. 86.

§ 8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement

Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as so restricted, with power to charge and collect rates or charges sufficient to provide for the payment of the expenses of repair (including replacements), maintenance and operation, and also to pay any bonds and interest outstanding, and to apply the income or other revenue in conformity with this article, and the said ordinance or trust indenture, or both, and the power herein provided for the appointment of a receiver and the administration by the court of the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, shall apply to cases where such works are operated by a lessee of the municipality or municipalities as well as to cases where works are operated by the municipality or municipalities. In case a receiver is appointed for works operated by a lessee of a municipality or municipalities, the lease agreement then existing between the municipality or municipalities and the lessee ipso facto thereby shall be terminated and all property, equipment, bills receivable and assets of every kind, used in connection with the operation of such works, shall pass to the receiver and upon the termination of such receivership, such works,

equipment, property, bills receivable and assets of every kind then in the hands of the receiver thereupon shall pass to the municipality or municipalities.

Acts 1935, c. 68, § 24; Acts 1937, c. 55; Acts 1969, c. 86.

Library References

Key Numbers

Municipal Corporations ⟹955(1).

Westlaw Key Number Search: 268k955(1).

Notes of Decisions

Mandamus 1

1. Mandamus

Duties of city council in discharging obligations of city under revenue bonds issued for construction of incinerator under act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works, were "administrative" and not "legislative", and therefore mandamus was a proper remedy to compel compliance with the act. Code, 8-4A-1 et seq., 8-4A-24. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Administrative Law And Procedure ⟹ 104

Holders of revenue bonds issued by city for construction of incinerator were not required to request city to comply with statute under which bonds were issued and to collect charges for incinerator service in plain violation of ordinance abolishing such charges, before bondholders could bring mandamus proceedings, since such requests of the city would be useless. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus ⟹ 14(1)

Holders of revenue bonds issued by city for construction of incinerator were not barred from relief by mandamus to compel city to make charges for garbage collections on ground of delay or acquiescence in city's failure to make charges for garbage collections, where there was no alteration in position by the city because of such acquiescence or delay. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus ⟹ 15

Mere payment of interest due on revenue bonds issued by city for construction of incinerator did not charge bondholders with knowledge that payments were being made from general revenue rather than from revenue from collection of garbage, and did not prevent bondholders from maintaining mandamus proceedings to compel city to comply with act under which bonds were issued, and to make charges for garbage collection. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus ⟹ 15

Default by city in payment of interest charges or principal on bonds issued for construction of incinerator, was not first required to be shown before mandamus would lie to compel compliance by city with act under which the bonds were issued, in view of provision of the act with reference to future payment of principal by accumulation of a sinking fund which largely affected the market value of the bonds. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus ⟹ 110

PART X—CONSTRUCTION; EXTRATERRITORIAL JURISDICTION

§ 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect. For all purposes of this article, municipalities shall have jurisdiction for ten miles outside of the corporate limits thereof, except where such zone would overlap with the zone of another municipality, in which event the meridian line of the overlapping zone shall be the dividing line of their respective jurisdic-

tions, except that one municipality shall have jurisdiction within such ten-mile zone and may overlap into the zone of another municipality or municipalities with the consent thereof.

Acts 1935, c. 68, § 25; Acts 1949, c. 86; Acts 1969, c. 86.

Library References

Key Numbers
Municipal Corporations ⟹277.
Westlaw Key Number Search: 268k277.

Notes of Decisions

In general 1

1. In general
The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935 c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⟹ 911

§ 8-16-26. Construction of power and authority conferred

This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation of the works herein provided for, and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the State to the contrary notwithstanding.

Acts 1935, c. 68, § 26; Acts 1969, c. 86.

§ 8-16-27. Article liberally construed

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof.

Acts 1935, c. 68, § 27; Acts 1969, c. 86.

Notes of Decisions

In general 1

1. In general
The Legislature, in enacting Acts 1935, c. 68 as a measure to promote public health, safety and welfare, intended it to have broad scope and wide application to public improvements beneficial to the public health, safety and welfare of municipalities in all sections of the State. State ex rel. Holbert v. Robinson, 1950, 59 S.E.2d 884, 134 W.Va. 524. Automobiles ⟹ 7

§ 8–16–28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only

In elaboration of the provisions of section eight, article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court, reference is made to the term "municipal authorities" or "municipal authority" within the meaning of the provisions of former article four-a of this chapter, such reference shall henceforth be read, construed and understood to mean "governing body" as that term is used in this article sixteen only.

Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

West's

Annotated Code of West Virginia

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

Chapters 8 to 10

2010
Cumulative Annual Pocket Part

Replacing 2009 Pocket Part supplementing 2002 Main Volume

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Notes of Decisions

Political conventions 2

ing conventions. 51 W.Va. Op. Atty.Gen. 780 (April 28, 1966) 1966 WL 87477.

2. Political conventions

Civil Service covered municipal police and firemen may as eligible voters participate in nominat-

§ 8–15–25. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members

Notes of Decisions

Just cause 3.5

3.5. Just cause

Firefighter's possession of cocaine provided just cause for city to terminate firefighter's employment; possession of cocaine cast doubt on firefighter's ability to perform the tasks inherent to his employment, which directly affected the rights and interests of the public. Giannini v. Firemen's Civil Service Com'n of City of Huntington, 2006, 640 S.E.2d 122, 220 W.Va. 59. Municipal Corporations ⟹ 198(2).

ARTICLE 15A

STANDARDS FOR PROFESSIONAL FIREFIGHTERS TRAINING; REGISTERED APPRENTICESHIP AND CERTIFICATION

§ 8–15A–1. Definitions

United States Code Annotated

Fire prevention and control, see 15 U.S.C.A. § 2201 et seq.

ARTICLE 16

MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING

Part VII—Accounting System and Records.
Section
8–16–20. Accounting system; yearly audit; custodian of funds.

PART VII—ACCOUNTING SYSTEM AND RECORDS

§ 8–16–20. Accounting system; yearly audit; custodian of funds

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for and in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept

separate and apart from other funds of the municipality or municipalities; and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen of this article.

Acts 1935, c. 68, § 19; Acts 1969, c. 86.

PART X—CONSTRUCTION; EXTRATERRITORIAL JURISDICTION

§ 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction

Law Review and Journal Commentaries

This Land is Whose Land? The Feasibility of Extraterritorial Jurisdiction in West Virginia's Land Use Planning Laws. Lori Schwartzmiller, 109 W. Va. L. Rev. 929 (Spring, 2007).

ARTICLE 18

ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE

Part XII—Connection to Sewers; Board of Health; Enforcement of Duty to Pay for Service.

Section
8-18-22. Connection to sewers; board of health; penalty.

PART I—POWER AND AUTHORITY TO MAKE IMPROVEMENTS

§ 8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements

Notes of Decisions

2. In general

A municipal corporation may use revenue sharing funds to pay that portion of the cost of the improvements to city streets not funded by special assessment. 55 W.Va. Op.Atty.Gen. 180 (November 5, 1973) 1973 WL 159172.

6. Liability of abutting landowners, generally

A County school board must pay municipal paving assessments assessed against its property, if benefited, including undivided interest thereof. 51 W.Va. Op.Atty.Gen. 588 (November 24, 1965) 1965 WL 92496.

Municipalities may not assess any municipal street cost against abutting property lying wholly outside municipality. 51 W.Va. Op.Atty.Gen. 13 (July 24, 1964) 1964 WL 72571.

PART III—APPORTIONMENT IN MAKING ASSESSMENTS

§ 8-18-9. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid

Notes of Decisions

County-owned property 2

1. State-owned property

State agency must pay its share of municipal paving costs of streets abutting State property. 51 W.Va. Op.Atty.Gen. 432 (August 19, 1965) 1965 WL 92466.

2. County-owned property

A County school board must pay municipal paving assessments assessed against its property, if

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 31, ARTICLE 15A OF THE WEST VIRGINIA CODE, AND CHAPTER 31, ARTICLE 15A OF THE 2010 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on
February 23, 2011

Natalie E. Tennant

Secretary of State

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Section

31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-4. Development of guidelines and preliminary application for funding assistance.
31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-12. Additional powers of water development authority.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-14. Termination or dissolution.
31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
31-15A-16. Dedication of severance tax proceeds.
31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.
31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.
31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.
31-15A-20. Infrastructure revenue bonds lawful investments.
31-15A-21. Purchase and cancellation of infrastructure revenue bonds.
31-15A-22. Refunding revenue bonds.
31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.
31-15A-24. Infrastructure revenue bonds exempt from taxation.

§ 31-15A-1. Short title

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act."

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-2. Definitions

For purposes of this article:

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

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

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

(d) "Council" means the West Virginia infrastructure and jobs development council created in section three of this article;

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

(f) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and

(2) will not likely be developed in that area if construction of the project is not commenced immediately;

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

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(*l*) "infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation:

(1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and

(2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

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

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

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

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

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

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

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

(t) "State development office" means the West Virginia development office established under article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

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

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

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one, chapter

twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties; and

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

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

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council.

No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

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

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

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

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

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

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six of this article; (5) the cost effectiveness of the project or infrastructure project as compared with

alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article.

Acts 1994, 1st Ex. Sess., c. 26.

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

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either

acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

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

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

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

Acts 1994, 1st Ex. Sess., c. 26.

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

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

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

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

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

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

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

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate.

Acts 1994, 1st Ex. Sess., c. 26.

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

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

commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

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

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance with the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the

restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

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

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

Acts 1994, 1st Ex. Sess., c. 26.

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

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

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

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

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (*l*), section two of this article and to include a water facility project as defined in subsection (n), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project.

The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b of this chapter.

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

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse

itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

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

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

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

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

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

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

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to

appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

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

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

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

Acts 1990, c. 2, abolished the office of commissioner of finance and administration and transferred all duties and powers to the secretary of administration. See § 5A-1-2.

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

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine of this article, upon receipt of one or more recommendations from the council pursuant to section five of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided,

however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

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

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand ninety-eight, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (1), section two of this article shall be subject to pro rata distribution. When determining median household income of a geographic area of the

project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

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

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

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (*l*), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for

community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

Acts 1994, 1st Ex. Sess., c. 26.

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

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-14. Termination or dissolution

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the

infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors.

Acts 1994, 1st Ex. Sess., c. 26.

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

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

(b) The state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project.

(c) This section does not:

(1) Apply to work performed on construction or repair projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the state or its subdivisions: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in the construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the state or a subdivision of the state comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2001, c. 45, eff. 90 days after April 14, 2001.

Historical and Statutory Notes

Acts 2001, c. 45 rewrote this section which as enacted provided:

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

"(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

"(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state."

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

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

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

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry

pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund that are due the water development authority on all outstanding loans previously made by the water development authority pursuant to the provisions of this article.

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

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

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure

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

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

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

facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had remained in office until such delivery, and if the seal of the water development authority has been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be sufficient for all purposes.

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

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-22. Refunding revenue bonds

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

Infrastructure revenue bonds issued pursuant to the provisions of this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. The holders or owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds shall be payable solely from the

revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

West's

Annotated Code of West Virginia

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

Chapters 31 to 31E

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any revenue bonds, or refunding revenue bonds, issued pursuant to this section, and for which moneys deposited in the Education, Arts, Sciences and Tourism Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the Education, Arts, Sciences and Tourism Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

"(b) The authority shall expend sixty percent of the bond proceeds, net of issuance costs, reserve funds and refunding costs, for certified capital improvement projects at state institutions of higher education. The Higher Education Policy Commission shall submit a proposed list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state institutions of higher education which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

"(c) The authority shall expend the balance of the bond proceeds for certified projects at state parks, the capitol complex, other state facilities or tourism sites. The secretary of the department of administration, the director of the division of natural resources, the director of the West Virginia development office and a representative of the capitol building commission, other than the secretary of the department of administration, who shall be selected by the capitol building commission shall submit a proposed list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state parks, the state capitol complex, other state facilities or tourism sites which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment."

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Section	
31-15A-3.	West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.
31-15A-6.	Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-11.	Reservation of funds for projects and infrastructure projects.
31-15A-16.	Dedication of severance tax proceeds.
31-15A-17a.	Infrastructure revenue bonds payable from A. James Manchin Fund.

§ 31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council

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

(b) The council shall consist of thirteen members, including:

(1) The Governor or designee;

(2) The Executive Director of the Housing Development Fund or his or her designee;

(3) The Director of the Division of Environmental Protection or his or her designee;

(4) The Director of the Economic Development Authority or his or her designee;

(5) The Director of the Water Development Authority or his or her designee;

(6) The Director of the Division of Health or his or her designee;

(7) The Chairman of the Public Service Commission or his or her designee; and

(8) Six members representing the general public: *Provided,* That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

(c) The Governor shall appoint the public members of the Council who shall serve three-year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be ex officio, nonvoting members of the Council.

(e) The Governor shall appoint the legislative members of the council: *Provided,* That no more than three of the legislative members may be of the same political party.

(f) The Governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board.

(g) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the Council and who shall keep records of its proceedings. Seven members of the Council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the Council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(h) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor's Civil Contingent Fund.

(j) The Water Development Authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

(k) The council shall invite to each meeting one or more representatives of the United States Department of Agriculture, Rural Economic Community Development, the United States Economic Development Agency and the United States Army Corps of Engineers or any successors thereto. The council shall invite other appropriate parties as is necessary to effectuate the purposes of this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005; Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

Acts 2005, 1st Ex. Sess., c. 3, rewrote (b); in (c), substituted "The governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson" for "The council shall annually elect one of its members as chairman"; rewrote (d); and made nonsubstantive changes throughout the section. Prior to revision, (b) and (d) read:

"(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state

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

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

Acts 2009, c. 221, rewrote this section, which formerly read:

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

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

"(c) The governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

"(d) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the department of administration.

"(e) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

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

"(g) The council shall invite to each meeting one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency, and the United States army corps of engineers or any successors thereto. The council shall invite such other appropriate parties as is

necessary to effectuate the purposes of this article."

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

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

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

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

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

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

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three-year period after the initial assessment and inventory is completed in 1996.

(c) The council shall study the viability of the consolidation of public service districts throughout the state. The council shall report their findings and conclusions on or before January 16, 1995 to the Governor, Speaker of the House of Delegates and President of the Senate.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

Acts 2009, c. 221, rewrote this section, which formerly read:

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

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

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

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

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

"(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the

construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three-year period after the initial assessment and inventory is completed.

"(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate."

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

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (*l*), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: *Provided*, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the executive director of the West Virginia development office for review, recommendation and approval regarding infrastructure project funding.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005.

Historical and Statutory Notes

Acts 2005, 1st Ex. Sess., c. 3, in the last sentence, substituted "executive director of the West Virginia development office" for "council for community and economic development, or its successor".

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

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

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter: *Provided*, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

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

(e) Notwithstanding any provision of this article to the contrary, the tax on coalbed methane remitted by the Tax Commissioner for deposit in the West Virginia Infrastructure Fund pursuant to section twenty-a, article thirteen-a, chapter eleven of this code shall be distributed as follows: (1) Seventy-five percent of the moneys so deposited shall be distributed for infrastructure projects in the various counties of this state in which the coalbed methane was produced, and (2) the remaining twenty-five percent of the moneys so deposited shall be distributed equally to the various counties of this state in which no coalbed methane was produced for infrastructure projects. Moneys shall be distributed to each coalbed methane producing county in direct proportion to the amount of tax paid by the county using information provided by the Tax Commissioner as required in section twenty-a, article thirteen-a, chapter eleven of this code.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998; Acts 2008, c. 213, eff. June 7, 2008.

Historical and Statutory Notes

Acts 2008, c. 213, added subsec. (e).

§ 31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund

Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure revenue bonds payable from the A. James Manchin Fund created by section nine, article fifteen-a, chapter twenty-two of this code and such other sources as may be legally pledged for such purposes other than the West Virginia Infrastructure Revenue Debt Service Fund created by section seventeen of this article.

Acts 2003, c. 251, eff. 90 days after March 8, 2003; Acts 2005, c. 199, eff. 90 days after April 9, 2005.

ARTICLE 15C

BROADBAND DEPLOYMENT

Section	
31-15C-1.	Legislative findings and purpose.
31-15C-2.	Definitions.
31-15C-3.	Broadband Deployment Council established; members of council; administrative support.
31-15C-4.	Powers and duties of the council generally.
31-15C-5.	Creation of the Broadband Deployment Fund.
31-15C-6.	Categorization of areas within state for broadband deployment purposes.
31-15C-7.	Retention of outside expert consultant.
31-15C-8.	Stimulation of demand through public outreach and education.
31-15C-9.	Development of guidelines and application for funding assistance; emergency rule-making authority.
31-15C-10.	Requirements for project funding assistance; review of project application by council; competitive applications.
31-15C-11.	Required reporting by state entities.
31-15C-12.	Limitation of liability.
31-15C-13.	Protection of proprietary business information.
31-15C-14.	Expiration of council.

§ 31-15C-1. Legislative findings and purpose

The Legislature finds as follows:

(1) That it is a primary goal of the Governor, the Legislature and the citizens of this state, by the year two thousand ten, to make every municipality, community, and rural area in this

AN ORDINANCE OF THE OHIO COUNTY COMMISSION CREATING AND ESTABLISHING A DEVELOPMENT AUTHORITY

WHEREAS, the Ohio County Commission, pursuant to Chapter 7, Article 12, Section 1, et seq., of the W. Va. Code, as amended, wishes to establish a development authority to, among other things, promote, develop and advance the business prosperity and economic welfare of Ohio County, West Virginia.

NOW, THEREFORE, BE IT ORDAINED BY THE OHIO COUNTY COMMISSION, AS FOLLOWS:

Section 1. Definitions.

The Ohio County Commission ("Commission") does hereby create and establish a public agency to be known as the Ohio County Development Authority ("Authority") which shall operate within the boundaries of Ohio County, West Virginia ("County").

Section 2 Purposes.

The purposes for which the Authority is created are to promote, develop and advance the business prosperity and economic welfare of the County, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the County and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the County, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the County; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial,

commercial, agricultural and recreational developments within the County; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the County.

Section 3. Management and Control.

The management and control of the Authority, its property, operations, business and affairs shall be lodged in a board comprising of twelve persons who shall be appointed by the Commission and be known as members of the Authority. The Commission shall appoint one member to represent the Commission on the board and, for each municipality located within the County, the Commission shall appoint one member to represent the municipality. The city and town council of each municipality located within the County shall submit to the Commission the names of three persons, one of whom the Commission shall appoint to be the municipality's representative on the board. Other members of the board shall be appointed by the Commission and shall include representatives of business, industry and labor. The members of the Authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the Commission may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the Commission to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The Commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor member for any member so removed.

Other persons, firms, unincorporated associates, and corporations, who reside, maintain

offices or have economic interests as the case may be, in the County, shall be eligible to participate in and request the Commission to appoint members to the Authority as the said Authority shall by its bylaws provide.

Section 4. Rights and Powers of Authority. Limitations.

The Authority shall be vested with those rights and powers and subject to those limitations to be found in Chapter 7, Article 12, Section 1, et seq., of the W.Va. Code, as amended, which relevant portions are hereby adopted as included herein.

Section 5. This Ordinance shall be effective from and after the date of its passage.

ADOPTED this 7th day of June, 2000.

THE OHIO COUNTY COMMISSION,

By David J. Sims
Its President

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OHIO COUNTY COMMISSION

The Ohio County Commission met in a regular session on Wednesday, July 20 2000 at 9:00 a.m.

Present at the meeting were Commission President David J. Sims, Commissioner Tim McCormick, Commissioner Randy Wharton, County Solicitor Landers Bonenberger, Administrator Greg Stewart, and Administrative Assistant Sara Bowman.

Commissioner McCormick made a motion to approve the minutes from the June 30, 2000 meeting. Commissioner Wharton second. Motion carried with all voting in favor.

WHEELING CENTRAL CHAMPIONS - GIRLS SOFTBALL - Commissioner Sims presented Coach Rick Magruder with a Resolution of Appreciation for the Wheeling Central Catholic High School 2000 Single A Girls State Softball Champions. Commissioner Sims commented that this was the sixth consecutive championship for the school and congratulated the team and their coaches. Coach Magruder thanked the Commission for their support. Commissioner Sims said that the Commission had also invited the boys baseball championship team, but they were not able to attend.

OHIO COUNTY BUILDING COMMISSION PUBLIC HEARING - Mr. James Companion spoke on behalf of the Ohio County Building Commission. All three members of the Building Commission, Mr. Brian Myers, Mr. Lee Kelvington and Mr. Jack Schuetz were present. He said that they were present for the public hearing in connection with the proposed acquisition of the AEP building through the issuance of revenue bonds by the Ohio County Commission. He said that the Commission had met on previous occasions to discuss the acquisition of the issuance of the bonds. The hearing today is set according to statute and a notice of the hearing was published in the Wheeling Intelligencer on July 7 and on July 10, 2000. The notice of proposed bond sale was published on July 3 and July 10, 2000. The Building Commission is authorized by statute to purchase this building assuming that all terms and conditions of the statute are complied with. He said that he and Mr. John Porco are serving as counsel for the Commission. The Commission is prepared to authorize the issuance of the bonds to raise a total of $375,000, $298,000 would be for the acquisition and the remainder would be for the improvements to the building. Mr. Companion said that it is proposed that all of the funding for the acquisition would be through the issuance of revenue bonds in the amount of $375,000. These bonds would then be paid off by the rents that would be derived from the leasing of the building. Mr. Companion said that the tax base is not being altered by this transaction. The only security for the bonds is the property itself. Mr. Companion said that they are prepared to have a closing on this transaction on August 1, 2000. He said that there had been a solicitation of bids from the local financial institutions for the purchase of the bonds. Three financial institutions have responded and submitted bids. The Building Commission is prepared to discuss the acceptance of these bids at the conclusion of the public hearing. Commissioner Sims convened a public hearing and asked if there was anyone present who would like to speak in regard to the purchase of the AEP building by the County. No one was present to speak in regards to this purchase, therefore, Commissioner Sims concluded the public meeting. Commissioner Sims thanked Mr. Myers, Mr. Kelvington and Mr. Schuetz for serving on the Building Commission. He said that the Ohio County Commission had been looking forward to this purchase for some time. He said that this will give Ohio County a judicial annex. He said that it was important to get everyone in the judicial system in one building and thus enable the County to provide the security needed. This building will also provide additional space for the Ohio County Sheriff's department. Commissioner McCormick said that he also wished to thank the Commission members for the hard work and noted that these members were serving without pay. Mr. Stewart said that we received bids from Progressive Bank, Wesbanco and One Valley Bank. He said that after reviewing all of the proposals, Progressive Bank has submitted a 5.94% fixed rate over fifteen (15) years and he recommended this as the best alternative. Commissioner Sims asked if all of the bids were comparing apples to apples and Mr. Stewart said that they were all three

comparable. Mr. Stewart said that the other two bids provided a variable rate that both started at higher than the 5.94% offered by Progressive. He said that he would feel better with a fixed rate over the fifteen (15) year period. Mr. Jack Schuetz made a motion to accept the bid submitted by Progressive Bank. Mr. Brian Myers second. Motion carried with all voting in favor. Mr. Jim Companion presented the Building Commission with a Resolution for purchase of the building. Mr. Jack Schuetz made a motion to accept the Resolution. Mr. Brian Myers second. Motion carried with all voting in favor.

OHIO COUNTY'S PROMISE - Mr. Jim Wright thanked the Commission on behalf of Ohio County's Promise for allowing them to speak at today's meeting. He introduced Laura Weibel, Director of the Child Care Food and Nutrition Program for the Diocese of Wheeling/Charleston and Lee Hager, Director of Ohio County Family Resource Network. Ms. Weibel said that statistics show that the welfare of our children is the most pressing issue facing the nation today and that personal involvement in the lives of our children of our community is the most important legacy that we can leave them. She said that America's Promise is about connecting kids to community resources and surrounding them with assets and affirmations. Ohio County and its Promise has much to offer the young population within our community through its existing resources, community partners as well as developmental assets. She said they include all members of our community and no one child is left out. The five fundamental resources of America's Promise are to teach, to nurture, protect, mentor and serve. This gives these children what they need to succeed which is support, empowerment, constructional use of their time, boundaries and expectations, commitment to learning, positive values, social competency and positive identity. She asked the Commission for their help in this ongoing commitment to the children by providing the necessary financial support so that they can employ an Americore Promise fellow. Ms. Hager said that Ohio County's Promise is a program under the Family Resource Network and they are the (501C3) that sponsors this program. She said that the Governor's Summit for West Virginia's Future was held in October of 1997 and before that Summit all County Commissions across the state received information from Governor Underwood requesting their help in promoting the Promise across the state of West Virginia. She requested $5,000 from the Commission which will be a match amount of money so that they could secure an Americore Promise fellow to work with them. She said that this is the third year that they would be working with an Americore Promise fellow and each year they had to provide a $5,000 match. She said that this match money does not cover salary, but rather for training conference fees for the Americore person and travel costs across the County and across the State. She said that Ohio County is considered a Community of Promise. She said that the state of West Virginia is the national leader as far as the Promise movement. She said that there 518 Americore fellows in the nation and West Virginia has 14 and Ohio County is lucky enough to have one of those Americore fellows. She said that this is not another social service agency, but rather an alliance collaboration of a lot of programs and a lot of services that are already in the community. Commissioner Sims said that he had read that West Virginia has the most communities participating in this program. He said that the person who is running this program on the State level needs to be congratulated. Commissioner McCormick made a motion to provide the $5,000.00 from the contingency fund as requested by the Ohio County Promise.
Ms. Hager said that Gen. Colin Powell will be coming to West Virginia in August to speak at the annual conference. He is coming to West Virginia because we have been so successful in the program across the state. Commissioner Wharton second. Motion carried with two voting in favor. Commissioner Sims abstained.

FAMILY SERVICES OF THE UPPER OHIO VALLEY GRANT ADMINISTRATION - Mr. Stewart gave the Commission a copy of a Resolution and an Information Sheet from Family Services. He said that they were successful in securing $25,000 from the Legislative Digest. They hope to make some improvements to the Human Resource Center. In order to accomplish this, they must ask the Commission to administer the grant. Commissioner Wharton made a motion to administer the grant for Family Services. Commissioner McCormick second. Motion carried with all voting in favor.

EMERGENCY SHELTER GRANT PROGRAM CONTRACT APPROVAL - Mr. Stewart said that this had been an on going grant for several years with the Ohio County Commission. He said

that they did receive approval again this year for $34,000 for the YWCA Emergency Shelter Program and $20,000 for the Homeless Coalition. Commissioner McCormick made a motion to approve the Resolution. Commissioner Wharton second. Motion carried with all voting in favor.

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT CONTRACT APPROVAL - Mr. Stewart said that this was the second year for this program. The total for this grant was a little over $49,000. There is a $5,000 match for the County. He said that Mr. Jim Lee spoke to the Commission about this at budget time. Mr. Stewart submitted a Resolution to the Commission authorizing the President to sign the contract to administer the program. Commissioner McCormick made a motion to approve the Juvenile Accountability Incentive Block Grant. Commissioner Wharton second. Motion carried with all voting in favor.

OHIO COUNTY CORRECTIONAL FACILITY - GENERATOR REPLACEMENT BIDS- Mr. Stewart said that the Commission had previously approved putting the generator at the Correctional Facility out for bid. He said that the generator is twenty-two (22) years old. He said that the jail is wired into this building as a back up at this time. He said that they received three bids , Davison Electric for $21,500, United Electric for $20,200, and Yahn Electric for $17,087. Mr. Stewart said that all are qualified bids. Commissioner McCormick made a motion to award the bid to Yahn Electric. Commissioner Wharton second. Motion carried with all voting in favor.

ARCHITECTURAL SERVICES FOR INITIAL COURTHOUSE ANNEX RENOVATIONS - SELECTION COMMITTEE - Mr. Stewart said that in anticipation of the closing on August 1, he had put out an RFP for architectural services. He said that according to code, we must go through a negotiation process and have a selection committee of three to five people in place. He presented the Commission with a list of names recommended to serve on this committee. The list consists of Mr. Greg Stewart, Tammy Ward, Landers Bonenberger, and Terry Sterling. Commissioner Wharton made a motion to approve the recommended committee members. Commissioner McCormick second. Motion carried with all voting in favor.

ENGINEERING & SURVEYING SERVICES FOR FORT HENRY DEVELOPMENT - PHASE I SELECTION COMMITTEE - Mr. Stewart said that we are moving past the concept phase and moving into the design and construction phase of the first 60 acre area. Mr. Stewart said that again we need to acquire engineering and surveying services and we must again have a selection committee. Mr. Stewart recommended himself, Mr. John Miller, our Extention Agent and a former Caterpillar Manager and understands heavy equipment and moving the earth, Mr. Tom Tominack, our Airport Manager. Mr. Tominack is very familiar with this process because we have gone through this process at the airport. Also Mr. Greg Stone, Federal Soil Conservation District Representative and also a Geologist and Mr. Craig O'Leary from OVIBDC. Commissioner McCormick made a motion to approve the recommendation for the committee. Commissioner Wharton second. Motion carried with all voting in favor.

OHIO COUNTY AIRPORT - LEASE REVISION - Mr. Tom Tominack said that American Legends has requested a new name be applied to their lease agreement. Mr. Bonenberger has reviewed the Assignment and Assumption Agreement and he does not have any difficulty with this change. The name is to be changed to Bud Forte & Associates. Commissioner McCormick made a motion that the President of the Commission sign the documents to change the name on the lease. Commissioner Wharton second. Motion carried with all voting in favor. Commissioner Sims congratulated Mr. Tominack on the July 4th celebration at the Ohio County Airport. Mr. Tominack said that this would not have been possible without the support of the Commission.

OHIO COUNTY DEVELOPMENT AUTHORITY - Mr. Stewart provided the Commissioners with a copy of the list of names and their cities that were submitted. We must have one representative from each of the six communities in the County and six members appointed by the Commissioners to

serve on this Authority. Commissioner Sims made a motion to appoint Randy Russell from the Village of Clearview. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner McCormick made a motion to appoint Nancy Weeks from West Liberty. Commissioner Wharton second. Motion carried with all voting in favor. Commissioner Wharton made a motion to appoint Larry Bandi from City of Wheeling. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner Wharton made a motion to appoint Raymond Hebling from Triadelphia. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner McCormick made a motion to appoint Paul Walters from the Village of Bethlehem. Commissioner Wharton second. Motion carried with all voting in favor. Commissioner Wharton made a motion to appoint John Lucas from the Village of Valley Grove. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner Sims made a motion that the three Ohio County Commissioners be appointed to serve. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner Sims made a motion to appoint Todd Hayes. Commissioner Wharton second. Motion carried with all voting in favor. Commissioner McCormick made a motion to appoint Terry Sterling. Commissioner Wharton second. Motion carried with all voting in favor. Commissioner Wharton made a motion to appoint Orphey Klempa. Commissioner McCormick second. Motion carried with all voting in favor. Commissioner Sims said that this would make the minimum and that they could add members up to twenty-five (25) later if needed.

OHIO COUNTY SHERIFF'S SETTLEMENT - Mr. Stewart presented the Sheriff's Settlement for the fiscal year ending June 30, 2000. This is for every fund that the Ohio County Sheriff's Office administers. Mr. Stewart said that if there are any revisions, they will bring them back to the Commission at that time. Commissioner Wharton made a motion to accept the Sheriff's Settlement as presented. Commissioner McCormick second. Motion carried with all voting in favor.

HOTEL TAX BUDGET REQUEST - Mr. Stewart said that he had received a request from the Oglebay Tennis Club for the annual West Virginia Tennis Open. Commissioner McCormick made a motion to allocate $500.00 from the Hotel Tax Budget to the Oglebay Tennis Club for the West Virginia Open. Commissioner Wharton second. Motion carried with all voting in favor.

BANK PLEDGE AGREEMENTS - Mr. Stewart presented the bank pledge agreements from Wesbanco and Progressive Bank. Commissioner Wharton made a motion to approve the bank pledge agreements from Wesbanco and Progressive Banks. Commissioner McCormick second. Motion carried with all voting in favor.

BUDGET REVISIONS - UNENCUMBERED FUND BALANCE 7/1/2000 - Mr. Stewart reported that the General County unencumbered balance for the fiscal year 2000/2001 was $180,605. He said that this must be submitted to the State Tax Department prior to July 31, 2000. Mr. Stewart said that there was $361,323 unexpended items from the budget. The contingency balance is $82,551 minus the $5,000 for the Ohio County's Promise. Mr. Stewart recommended that the Commission provide $75,000 to assist in the renovation of the AEP building and to put the balance of $105,605 in the Contingency Fund. This would leave a contingency balance of approximately $183,156. Commissioner McCormick made a motion to take $75,000 from the unencumbered balance to assist in the renovation of the AEP Building and to put the balance in the Contingency Fund. Commissioner Wharton second. Motion carried with all voting in favor.

STAFF REPORTS

Mr. Stewart said that he had been notified by Mr. Jim Companion that the closing of the Linsly Bond Issue will be held on July 31, 2000 at Wesbanco. Mr. Stewart said that he and Mr. David Sims will be present for the closing to sign the documents.

Mr. Stewart said that he did receive the Highway Safety Grant from the State. He said that the six month total is $$34,136.

BILLS TO BE PAID

A copy of the bills to be paid were submitted to the Commission for their approval. Commissioner McCormick made a motion to pay the bills as presented. Commissioner Wharton second. Motion carried with all voting in favor.

REVIEW OF EXONERATIONS

The following exonerations were presented to the Commissioners. Those exonerations were #83,#421#423,#425,#426,#84,#85,#86,#87,#88,and a debit on #43. The Assessor recommended these exonerations. Commissioner McCormick made a motion to approve the exonerations based upon the recommendation of the Assessor. Commissioner Wharton second. Motion carried with all voting in favor.

COMMISSIONER'S COMMENTS

Commissioner McCormick congratulated Mr. Tom Tominack on the job he and his staff did on the July 4th celebration.

There being nothing further to discuss, Commissioner Sims adjourned the meeting. The next meeting will be held on Wednesday, August 2, 2000 at 4 p.m.

David J. Sims
Commission President

Gregory L. Stewart
County Administrator

Ohio County Development Authority
Meeting Minutes
June 16, 2009

The Ohio County Development Authority met on June 16, 2009 in the Ohio County Commission Board Room. Board members in attendance were Larry Bandi, Tom Cerra, Raymond Helbling, John Lucas, Tim McCormick, Randy Russell, David Sims, Terry Sterling, Greg Stewart, Paul Walters, and Randy Wharton. Mr. Sims stated a quorum is present.

Also in attendance were legal counsel Lanny Bonnenberger, and guests Andy McKenzie and Jim Rosenberry.

Approval of May 5, 2009 Meeting Minutes

Mr. Sims stated the first item on the agenda is the approval of the minutes from the May 5, 2009 meeting. Mr. Cerra moved to accept, seconded by Mr. Stewart. Motion carried with all voting in favor.

Treasurer's Report

Mr. Stewart stated the report is as of June 16, 2009. The bank balance as of our last meeting was $221,095.67. We have received contributions from Coal Severance of $14,500. Revenues include rent and CAM fees of $492,556.91 and refunds and reimbursements in the amount of $255.24. Disbursements are listed with back up attached and they total $413,635.42. That leaves an Operating Bank balance as of May 31, 2009 at $314,772.40.

The construction bank balance is $427,405.73, and listed below are the checks written for June 2009 and the funding which includes the West Virginia IJDC Loan for $3,000,000 which we closed on June 12. The cash available as of June 16, 2009 is $1,839,153.

Finally, is a detailed listing of Future Commitments and then available funding – including West Liberty University's Contribution of $800,000. Total monies available is $1,380,982. Mr. Stewart asked that everyone please take a minute and sort back through that information. Mr. Sims asked if there were any questions. Mr. Cerra moved to accept the Treasurer's Report, seconded by Mr. Sterling. Motion carried with all voting in favor.

New Member

Mr. Sims stated that you may have noticed Andy McKenzie here with us. Beginning July 1, 2009, Mr. Bandi will be resigning from the board, and Mayor McKenzie will be his replacement. We want to welcome Mayor McKenzie to the Development Authority and to thank Larry for his time and contribution to the development authority. Your knowledge in the business world has certainly been a value to us, so we thank you.. Mr. Bandi stated it has been a pleasure working with everyone, and I have enjoyed my time on the board and look forward to the continued success of The Highlands.

Guest – Mr. Jim Rosenberry

Mr. Rosenberry stated that I live in Bethlehem and retired two years ago from a large excavating company with 47 years of service and 30 as the district manager right here in Wheeling. I want to say what a great development The Highlands is, and any community would be proud to have , and you all deserve a lot of credit.

On the flip side, in my opinion it looks to me like in the last several years you guys have been passing out a lot of work and by-passing the bidding process. I have three scenarios that I would like to run by you and see what you have to say.

First would be the side that has Eat n'Park, Quiznos, Cracker Barrel, WesBanco, Cheddars, McDonalds, Wendy's. All of those sites were done by one contractor and not a one of them was bid. There are other sites out there too, but those in a row are real obvious. Mr. Sims asked is there a question? Mr. Rosenberry stated the question would be why weren't they bid. Mr. Stewart stated that I do not know that statement is one-hundred percent accurate. We do some change order work, as we are allowed to do. Just as we did some change order work with Beaver Excavating when you were with them.

Mr. Rosenberry stated then let me mention change orders. They are meant to be used inside a contract. The state of West Virginia and the state of Ohio do not issue change orders to give out new jobs. And I think you guys are tied in to state bidding specs. Mr. Stewart stated that we have often honored that, but we are not required as the development authority to follow the same bidding guidelines as the local government entity or state of West Virginia. The state also has an economic development branch – the EDA, and they are similar and do not have to follow all of those bidding requirements. When we started the development and some of our

early grant dollars were in play, following the state guidelines was a requirement because the authority was utilizing state grant dollars.

Mr. Rosenberry stated the second situation is Lot 9 and Lot 13C that was handed out on a time and material basis. Mr. Stewart stated Lot 13 was bid. Mr. Rosenberry stated I said 13C. Mr. Stewart stated 13C was just a fill easement area for us. That is where all of the initial dirt from Lot 13 went, so that was part of the Lot 13 contract. In the case of Lot 9, it was to our advantage to finish that under change order because the fuel prices had went up. That was included in the Lot 13 job, but it was not conceived in the beginning that we would do all of that, but with the permit delays, we did change order it in. If we would have bid that out, in my opinion it would have cost us more because fuel had gone up significantly.

The third item is on May 6 there was an article in the newspaper that the development authority was going to have Wild Escape Theme Park Steve Minard bid out and pay for the earth work on his project. And I guess I wonder how does that happen? How can the county take publicly owned land and turn it over to a private developer. Mr. Stewart stated we are bidding that out. We have always been going to control the dirt work on that job. Mr. Rosenberry stated no, I have the newspaper article right here. Mr. Sims stated that I am sure it does say that, but it does not mean it is fact.

Mr. Rosenberry stated that is all I have. I just wanted to question the bidding process and why certain projects were not bid. Mr. Bonenberger stated there is nothing in the statute that created the development authority or that requires the development authority to bid out contract work. In West Virginia, it is the state and political sub divisions of the state that are required to bid out construction contracts. The development authority is not defined as a political subdivision; it is a public corporation which is an entirely different creature under the law.

Mr. Rosenberry asked does this board have any statutes on file anyplace? Are you saying you do not have any bidding regulations? Mr. Sims stated we have our own. Mr. Stewart stated we have bid criteria in our contract documents, and we can get you a copy of those.

Marketing

Mr. Stewart stated I was hopeful on having something to show you tonight. They have a lot of it completed, but not to the point to set up and show. We are making progress.

Site Development

Permitting

Mr. Stewart stated I am happy to report that all the permits are complete, and today we signed the final easement document for our mitigation work on Middle Wheeling Creek.

Earthwork

Lot 9 and 13C

These began on April 3 and all of that earthwork for Straub's should finish around July 13. Straub is still planning on being onsite on August 15th to start the construction of their facility. There will be a little earthwork to do down by the Gantzer farm.

Buildings

OCDA Building II

Mr. Russel stated on Building II we are at ninety percent for Fusion Steakhouse, they want to open August 1. The Wings to Go folks are doing their build out right now. AT&T is in design for some revisions they have requested which added an addition al 1000 square feet to their space – which means more rent. Don Tequilas is back on track, and we still have one vacant space.

QS&L

The roof has started to go on, and then the entire building will be closing in and the glass will go up. We are still looking for the first week of August for opening.

TC-5

Mr. Stewart stated we are still on schedule, and they are looking to be ready August 15. The first floor tenants will not start opening until September.

Sheetz

OHIO COUNTY DEVELOPMENT AUTHORITY
Meeting Minutes
November 17, 2009

The November 17, 2009 meeting of the Ohio County Development Authority was called to order. Those in attendance were Lanny Bonenberger, Raymond Helbling, John Lucas, Tim McCormick, Randy Russell, David Sims, Terry Sterling, Gregory Stewart, Paul Walters, Nancy Weeks, and Randy Wharton.

Approval of October 28, 2009 Meeting Minutes

Mrs. Weeks moved to accept the minutes submitted, Terry Sterling seconded. Motion carried with all voting in favor.

Election of Officers

With the resignation of Larry Bandi, that leaves the position of Vice President vacant. Tim McCormick nominated Nancy Weeks, seconded by Paul Walters. It was moved that the nominations be closed. All voted in favor of Nancy Weeks serving as Vice President. Motion carries.

Treasurer's Report: As of October 30, 2009

Mr. Stewart stated you have before you the Treasurer's Report that begins with the balance since the last meeting - $495,007.89. We have taken in revenues of rent and CAM of $593,401.88 which gives us a balance of $1,088,409.77. Below that are the accounts payable runs totaling $787,389.97. We now have a bank balance with Progressive of $301,019.80.

The Construction account balance at United is $49,489.29. After the checks taken in and the future commitments – as listed – leaves cash available today of $45,322.

John Lucas moved to accept the Treasurer's Report, seconded by Ray Helbling. Motion carried with all voting in favor.

Financing

Mr. Stewart stated we continue to move along with the Federal EDA on our water project. As we will go over, an engineering firm has been selected for your approval. The next step will be to sign a contract with them and then schedule a kick-off meeting with them in mid-December.

Site Development
Buildings

OCDA Building II

Mr. Stewart stated most of the tenants are open. Don Tequilas is the one we are waiting on. Mrs. Weeks asked if you get feedback on how they are doing. Mr. Stewart stated we do see the sales reports. Fusion is doing very well, Smoker Friendly and AT&T we do not have any history on yet, and Wings-to-Go is going well.

Town Center V

Allstate is open, H&R Block is set to open on January 1, 2010, NiNi's Treasurers is opened and has a very nice space and is doing very well. We are working on the Tony's Nails spot.

Utilities

Traffic Signals

Mr. Stewart stated that the controller for the flashing signal down by the theatre should be in next week. There is one problem with the signal at the Sheetz intersection where the left turn signal is not working and we have notified them of that.

Lot 9

As this area progresses, you can see that the building is now coming out of the ground. Mr. Duggan has called a couple of times asking about the waterline progress. Although we have no formal obligation with him, I have let him know we will get there as soon as we can.

Engineering

Ohio County Water Project

Mr. Stewart stated the engineering committee - which includes Tom Tominack, Orphy Klempa, Terry Sterling, John Miller and I- interviewed three of the engineers that we mentioned at the last meeting. You have before you the individual score sheets and with them a composite of those scores. Vaughn Coast & Vaughn is who the committee is recommending to the board. Mrs. Weeks moved to approve, seconded by Mr. Lucas. Motion carried with all voting in favor.

Executive Session

Mr. Sims stated we need to go into Executive Session under WV Code 6-9A-4(9) in order to discuss potential tenant and property transactions. Mrs. Weeks so moved, seconded by Mr. Klempa. Motion carried with all members present voting in favor.

The membership came out of Executive Session

Tenant Transaction

Mr. Sims stated we have the agreement for Daniel's Menswear to operate in the former Crones space. Mr. Russell moved to approve, seconded Mr. Helbling. Motion carried with all voting in favor.

The meeting was adjourned.

David Sims, President

Gregory Stewart, Sec/Treasurer

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, Orphy Klempa, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print name and Address:

Mr. Orphy Klempa
56-19th Street
Wheeling, WV 26003

Subscribed and sworn before me , in said County and State, this 14th day of December 2010.

Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TAMARA A. BOMAR
[illegible] Point Road
[illegible] West Virginia 26003
[illegible] Feb. 13, 2016

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, Gregory L. Stewart, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of West Virginia Code, to the best of my skill and judgment.

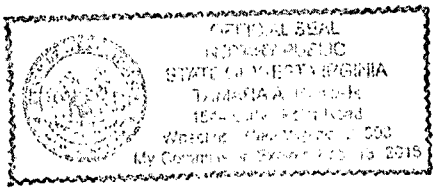
Signature

Print name and address:

Gregory L. Stewart
1500 Chapline Street
Wheeling, WV 26003

Subscribed and sworn before me, in said County and State, this 8th day of April 9, 2009.

Notary Public



OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, Andy McKenzie, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print name and Address:

Andy McKenzie
12 Pinewood Drive
Wheeling, WV 26003

Subscribed and sworn before me, in said County and State, this 14th day of December 2010.

Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, TomCerra, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Tom Cerra
21 Armory Drive
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TAMARA A. BOHAR
3419 Pratt Road
Wheeling, West Virginia 26003
My Commission Expires Feb. 13, 2016

Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, NancyWeeks, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Nancy K. Weeks
Signature

Print Name and Address:

Mrs. Nancy Weeks
4041 Oglebay Drive
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TAMARA BOHAR
[illegible] Peal Road
Wheeling, West Virginia 26003
My Commission Expires Feb 13, 2016

Tamara Bohar
Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

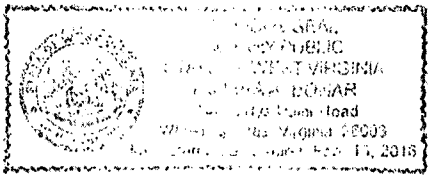
I, JohnLucas, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

John M Lucas
Signature

Print Name and Address:

Mr. John Lucas
~~RD 2 Box~~ 66 9889 National Rd.
Valley Grove, WV 26060

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.



Tamara J Barcal
Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

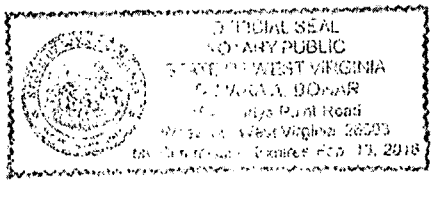
I, TimMcCormick, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Tim McCormick
1500 Chapline Street
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.



Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, RaymondHelbling, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Raymond J. Helbling Jr.
Signature

Print Name and Address:

Mr. Raymond Helbling
4899 National Road
Triadelphia, WV 26059

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TAMARA A. BONAR
154 Tulip Run Road
Wheeling, West Virginia 26003
My Commission Expires Feb. 13, 2016

Tamara A. Bonar
Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, TomCerra, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Tom Cerra
21 Armory Drive
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Notary Public

Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

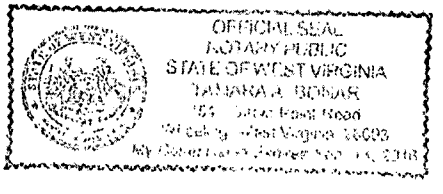
I, PaulWalters, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Paul Walters
45 Baytree Drvie
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.



Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

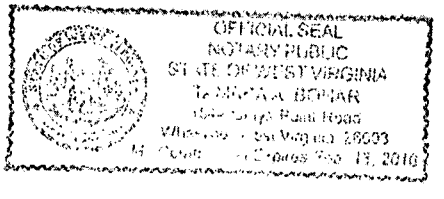
I, RandyRussell, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Randy Russell
5 Maser Lane
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.



Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

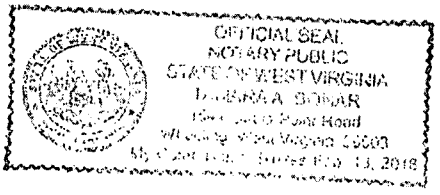
I, RandyWharton, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Randy Wharton
1500 Chapline Street
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.



Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, TerrySterling, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. Terry Sterling
Chamber of Commerce
1310 Market Street
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

Notary Public

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO WIT;

I, DavidSims, do solemnly swear that I will faithfully discharge the duties as a member of the Ohio County Development Authority, in accordance with Chapter 7, Article 12 of the West Virginia Code, to the best of my skill and judgment.

Signature

Print Name and Address:

Mr. David Sims
1500 Chapline Street
Wheeling, WV 26003

Subscribed and sworn to before me, in said County and State, this 8th day of April, 2009.

Notary Public

BY LAWS OF THE
OHIO COUNTY DEVELOPMENT AUTHORITY

ARTICLE I - THE AUTHORITY

Section 1. Name of Authority. The name of the Authority shall be the "Ohio County Development Authority." It shall herein after, in these By Laws, be referred to as the "Authority."

Section 2. Authority to be a Public Corporation. The Authority and the members thereof shall constitute and be a public corporation under its name, as provided by Chapter 7, Article 12, Section 1, et seq., of the West Virginia Code and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded, and have and use a common seal.

Section 3. Powers and Authority. The Authority shall have and may exercise all of the powers and authority as provided and set forth in Chapter 7, Article 12, Sections 1 through 14 of the West Virginia Code, as amended, and as the Legislature of the State of West Virginia may hereafter confer upon similar Development Authorities.

Section 4. Office of Authority. The office of the Authority shall be located within Ohio County, West Virginia, at such place as may be designated by the Authority.

Section 5. Place of Holding Meetings. All meetings of the Authority shall be held at the office of the Authority, or at such other place in Ohio County as the President of the Authority shall determine and as shall be stated in the notice of such meetings.

ARTICLE II - MEMBERS OF THE AUTHORITY

Section 1. Management and Control of the Authority. Management and control of the Authority, its property, operations, business and affairs shall be lodged in a Board of the

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Authority, which shall be appointed by the Ohio County Commission.

Section 2. Members of the Authority. The Authority shall consist of not fewer than twelve (12) nor more than twenty-one (21) persons who shall be appointed by the County Commission of Ohio County as provided by Chapter 7, Article 12, Section 3 of the West Virginia Code.

Section 3. Terms of Appointment. In accordance with Chapter 7, Article 12, Section 3 of the West Virginia Code, initial appointments to the Authority shall be staggered terms of one, two and three years, which shall be divided equally among the newly appointed members. Thereafter, members shall be appointed for terms of three (3) years each.

Members may be reappointed to additional terms. If a member resigns, is removed or his or her membership terminates for any other reason during his or her term of appointment, a successor shall be appointed by the Ohio County Commission to fill out the remainder of his or her term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The Authority may recommend to the Ohio County Commission that it remove a member of the board, who has, without being excused by the President of the Authority, missed three (3) regular meetings in any calendar year. The Ohio County Commission may at any time remove any member of the board of the Authority by an order duly entered of record and appoint a successor member for any member so removed.

ARTICLE III - MEETINGS

Section 1. Annual Meeting of Members. An annual meeting of the members of the Authority shall be held in January of each year, on a date, time and place in Ohio County to be designated by the President. The Secretary shall send a notice of said meeting to all members by regular mail not less than fifteen (15) days before the meeting date. At each annual meeting, the

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members shall elect the officers of the Authority, for the terms and as herein after provided, and shall transact such other business as may be properly considered by the members.

Section 2. Other Meetings of the Authority. Other meetings of the members of the Authority shall be held from time to time at such times as may be deemed necessary and as may be called by the President of the Authority, or by a majority of the members of the Board of the Authority. The Secretary shall send notices of meetings to all members by regular mail not less than fifteen (15) days before the meeting date.

Section 3. Quorum. A quorum of members at the annual or other meetings of the Board of the Authority shall be necessary. A quorum shall consist of at least fifty percent (50%) of the members of the authority.

Section 4. Vote. Each member of the Board of the Authority shall be entitled to one (1) vote at any meeting of the Board of the Authority. Votes by proxy shall not be permitted. Ex-officio members shall have no voting rights.

ARTICLE IV - OFFICERS

Section 1. Officers of the Authority. The officers of the Authority shall consist of a President, Vice President, Secretary and Treasurer, who shall, except for the Treasurer, be elected by the members from the membership of the Board of the Authority at the annual meeting of the Board of the Authority. The offices of Secretary and Treasurer may be held by the same individual. Interim officers may be elected upon formation of the Authority and serve until the first annual meeting. The officers so elected shall serve in their respective positions until the next annual meeting of the Authority or until their successors are duly elected by the membership of the Authority.

Section 2. President. The President shall preside at all meetings of the Executive

Committee and act as chairperson at all meetings of the members. The President shall have power to call special meetings of the members and Executive Committee for any purpose. When authorized by the Executive Committee, he or she shall make and sign contracts and agreements in the name of and on behalf of the Authority. While the Executive Committee is not in session, he or she shall have general management and control of the business and affairs of the Authority; and he or she shall generally do and perform all acts incident to the office of President, or which are authorized or required by law.

Section 3. Vice President. The Vice President shall have such powers and shall perform such duties as may be assigned to him or her by the Executive Committee. In case of absence or disability of the President, the duties of the office of the President shall be performed by the Vice President unless and until the Executive Committee shall otherwise direct.

Section 4. Secretary. The Secretary shall give, or cause to be given, notice of all meetings of members and Executive Committee, and all other notices required by law or by these By Laws, and in case of his or her absence or refusal or neglect so to do, any notice may be given by any person thereunto directed by the President, or by the Executive Committee upon whose requisition the meeting is called, as provided by these By Laws. He or she shall record all the proceedings of the meetings of the Board of the Authority and of the Executive Committee in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Executive Committee or the President. He or she shall have the custody of the seal of the Authority and shall affix the same to all instruments requiring it, when authorized by the Executive Committee or the President, and attest the same.

Section 5. Treasurer. The Treasurer shall have custody of all funds, securities, evidence of indebtedness and other valuable documents of the Authority; he or she shall receive

and give, or cause to be given, receipts and acquittance for monies paid in on the account of the Authority and shall pay out of the funds on hand all debts of the Authority of whatever nature and upon maturity of the same; he or she shall enter or cause to be entered in books of the Authority to be kept for the purpose, full and accurate accounts of all monies received and paid out on account of the Authority, and he or she shall perform all the other duties incident to the office of Treasurer.

Section 6. Signatures. All checks, orders and drafts for the payment of money shall be signed by both the Treasurer and countersigned by one other officer or the Executive Director, if one is appointed.

Section 7. Executive Director. An Executive Director may be appointed by the Executive Committee. His or her duties shall be determined by the Executive Committee from time to time as appropriate.

Section 8. Fidelity Bond. The Authority may require bond for the officers authorized to sign checks.

ARTICLE V - EXECUTIVE COMMITTEE

Section 1. Members of the Executive Committee. There shall be an Executive Committee of five (5) members of the Board of the Authority which shall be comprised of the persons holding the following qualifying positions if they are members of the Authority, duly appointed by the Ohio County Commission:

(a) President of the Authority, who shall be the chairperson

(b) Vice President of the Authority

(c) Secretary of the Authority

(d) Treasurer of the Authority

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(a) President of the Authority, who shall be the chairperson

(b) Vice President of the Authority

(c) Secretary of the Authority

(d) Treasurer of the Authority

(5) Member of the Ohio County Commission

Section 2. Terms of Members of the Executive Committee. Unless sooner terminated as herein provided, the term of office of each member of the Executive Committee shall run from his or her first appointment or qualification until the next annual meeting of the Authority. Thereafter, the terms shall be renewed each year until the next annual meeting or earlier termination if the person involved continues to hold the qualifying position or is appointed by the President.

Section 3. Authority of the Executive Committee. The Executive Committee shall have the authority to exercise all powers and authority of the Authority. It shall have the responsibility of establishing and directing the long range goals and objectives of the Authority and to coordinate and direct all economic development activities in Ohio County.

Section 4. Vote Disqualification. No member of the Authority or Executive Committee shall vote on a question in which he or she is interested, otherwise than as a member, except the election of a president or other officer, or be present while the same is being considered; but if his or her retirement from the meeting in such cases reduces the number present below a quorum, the question may nevertheless be decided by those who remain. On any question, the names of those voting each way shall be entered on the record of their proceedings if any member at the time requires it.

Section 5. Vacancies. Unless otherwise herein provided, vacancies occurring in the membership of the Executive Committee, except that member of the Ohio County Commission, from whatever cause arising, may be filled from the ranks of the Authority by a majority of the remaining members thereof.

Section 6. Compensation of Members of the Executive Committee. Members of the

Authority and Executive Committee shall not receive any compensation for their services, but may be entitled to reimbursement for their actual expenses.

ARTICLE VI - INDEMNIFICATION

Section 1. Indemnification of Officers, Members of the Authority and Members of the Executive Committee. Each member of the Executive Committee, each member of the Authority and the officers shall be indemnified by the Authority against costs and expenses at any time reasonably incurred, and judgments and decrees at any time adjudged against them arising out of or in connection with any claim, action, suit or proceeding against them or to which they may be made a party by reason of being or having been a director or officer of the Authority, unless they shall be adjudged guilty of willful and intentional misconduct respecting the matter or matters at issue therein. If in the judgment of the Board of the Authority, a settlement of any claim so arising is deemed in the best interest of the Authority, any such member or officer shall be reimbursed for any amounts paid in affecting such settlement and reasonable expenses thereby incurred. The foregoing right of indemnification shall be in addition to any and all other rights to which any such member or officer may be entitled as a matter of law.

ARTICLE VII - MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Authority shall end on the 30th day of June of each year.

Section 2. Rules, Regulations, Administrative Policy and Practice. The Authority may, as circumstances require, adopt such rules and regulations, or administrative policies and practices, as it deems suitable for the administration of its technical and salaried personnel.

ARTICLE VIII - AMENDMENTS

Section 1. Amendments of By Laws. These By Laws may be amended by the

affirmative vote of two-thirds (2/3) of the Authority members at any annual meeting or at any special meeting called for the purpose.

ARTICLE IX - EMPLOYEES AND CONTRACTORS

Section 1. The Authority may employ or contract with a person or firm to act as Executive Director and hire other persons as employees or contractors for purposes in furtherance of the objectives of the Authority.

APPROVED at a meeting of the Authority on the 31st day of August, 2000.

David J. Sims
President

Gregory T. Stewart
Secretary

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 12th day of August, 2010.

CASE NO. 10-0951-PWD-W-PC

OHIO COUNTY PUBLIC SERVICE DISTRICT, a public utility, Triadelphia, Ohio County, and CITY OF WHEELING, Ohio County.

Joint application for approval of an Alternate Main Extension and Transfer Agreement between the joint applicants and the Ohio County Development Authority.

COMMISSION ORDER

The Commission approves entry into an alternate main extension and transfer agreement, by which public water service will be extended to a commercial development known as The Highlands and surrounding areas.

BACKGROUND

Ohio County Public Service District and the City of Wheeling have negotiated an Alternate Main Extension and Transfer Agreement with Ohio County Development Authority to facilitate the construction of a 23,555-foot water line extension, a one million-gallon storage tank, and a 1,400-gallon-per-minute booster pumping station, to i) serve an economic development project located in the Dallas Pike area near Wheeling known as The Highlands, as well as other areas in northeastern Ohio County, ii) facilitate expansion activities at The Highlands and Wheeling Hospital, iii) support new commercial, industrial, residential and tourism-related developments in the area, and iv) improve water service to three schools and two medical facilities. Ohio County PSD will supply the project with water purchased from Wheeling. Slightly more than half of the water main will be constructed within Wheeling and the remainder will be located within the Ohio County PSD service area.

The project will be funded by a grant and a loan to the Development Authority:

US Department of Commerce, Economic Development Administration grant	$6,400,000
WV Infrastructure and Jobs Development Council loan, 20 years, 3% interest	1,600,000
	$8,000,000

Petition pp. 1-3. After construction is complete, and upon inspection and approval by Ohio County PSD and Wheeling, the Development Authority will convey the respective portions of the water line to Wheeling and Ohio County PSD.

Attached to the petition were, among other things, the Alternate Main Extension and Transfer Agreement, the award letters for the grant and loan, and the West Virginia Office of Environmental Health permits for transmission mains, water tank and booster station. Id. & attachments.

On July 2, 2010, Commission Staff recommended that the petition be granted. Initial & Final Joint Staff Memorandum pp. 1-2. Technical Staff noted that neither Ohio County PSD nor Wheeling will incur any cost or debt related to the construction of this project. Initial & Final Internal Memorandum p. 2, attached to Initial & Final Joint Staff Memorandum.

Based upon our review of the case file, the Commission concludes that it is reasonable to approve the alternate main line extension and transfer agreement.

FINDING OF FACT

Staff recommends approval of the alternate main line extension and transfer agreement.

CONCLUSION OF LAW

It is reasonable to approve the alternate main line extension and transfer agreement.

ORDER

IT IS THEREFORE ORDERED that the alternate main line extension and transfer agreement is approved and this matter is removed from the Commission's docket of active cases.

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

A True Copy, Teste: Sandra Squire

Sandra Squire
Executive Secretary

CLW/sek
100951c.wpd

WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Joe Manchin, III
Chairman

Kenneth Lowe, Jr.
Public Member

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Ron Justice
Public Member

Angela K. Chestnut, P.E.
Executive Director

Barbara J. Pauley
Administrative Secretary

July 14, 2009

Greg Stewart
Ohio County Development Authority
Rm. 215 City/County Bldg.
1500 Chapline St.
Wheeling, WV 26003

Re: Ohio County Development Authority
2009W-1119 Binding Commitment

Dear Mr. Stewart:

The West Virginia Infrastructure and Jobs Development Council (Infrastructure Council), at its July 8, 2009 meeting, voted to offer the Ohio County Development Authority (Authority) a binding commitment for a $1,600,000 Infrastructure Fund loan (3%, 20 yrs) (Loan). Once the $6,400,000 US Economic Development Administration grant is secured to provide matching funds for a US EDA grant, you will need to contact the Infrastructure Council to set up a bid schedule and to comply with other program requirements. The Loan will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Loan amount will be established after the Authority has received acceptable bids for the Project.

Please contact Angela K. Chestnut at 304-558-4607 if you have any questions.

Sincerely,

Kenneth Lowe, Jr.

KL:bjp

Attachment

cc: Bob DeCrease, P.E., BPH (w/o enclosure) *(via e-mail)*
Morgan Coast, P.E., Vaughn, Coast & Vaughn *(via e-mail)*
Region X Bel-O-Mar Reg. Council & Interstate Plan. Comm. *(via e-mail)*

180 Association Drive • Charleston, WV 25311 • Phone (304) 558-4607 • Fax (304) 558-4609

www.wvinfrastructure.com

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Infrastructure Council.

Ohio County Development Authority

By: _____

Its: Secretary - Treasurer

Date: 8/31/09

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Ohio County Development Authority
Water Project 2009W-1119

SCHEDULE A

A. Approximate Amount: $1,600,000 Loan

B. Loan: $1,600,000

1. Maturity Date: 20 years from date of closing.
2. Interest Rate: 3%
3. Loan Advancement Date(s): Monthly, upon receipt of proper requisition.
4. Debt Service Commencement: The first quarter following completion of construction, which date must be identified prior to closing.

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

C. Special Conditions: The funding package may be reduced prior to closing if an additional grant source is procured.

D. Other Funding:
US EDA grant $6,400,000

E. Total Project Cost: $8,000,000

F. Proposed User Rates: Approximately $23.85 / 4000 gallons

IC-1
(08/09)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

OHIO COUNTY DEVELOPMENT AUTHORITY
(2009W-1119)

(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

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

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a 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 project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

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

ARTICLE I

Definitions

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

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

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

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

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

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

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

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

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

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

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

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

specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

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

2.4 The Governmental Agency agrees that the Authority and the Council and their 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 the Council and their 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 and the Council 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 and the Council, acting by and through their directors or their 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 and the Council such documents and information as they 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 the Council and their 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 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 Council and the Authority and shall verify or 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 are 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 Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council 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 Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the 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 and Council.

2.13 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.14 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, 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 and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council 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 and the Council, to such effect;

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

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council 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 and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council 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 and the Council, to such effect; and

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

and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council 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, the Council 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, the Council 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 Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund 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.

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 Council:

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) 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) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and 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 Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, 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 and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

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

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

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

(xiv) That the proceeds of the Local Bonds, advanced from time to time, 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 and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

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

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

(xvii) 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. When required by the Authority, the Local Entity shall make monthly payments to the Commission by electronic transfer;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) 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 State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer 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 and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council 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 Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before making any changes to the final Schedule B and also before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; 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 Council and 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 Council 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 monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, 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 and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

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

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System 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 the payment due 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, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council 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.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B 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 and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine

Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 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.

7.10 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 Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or

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

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.

OHIO COUNTY DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: President
Date: February 28, 2011

Attest:

_____
Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: February 28, 2011

Attest:

_____
Its: Authorized Officer

{C1778458.1}

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers,_____, _____ hereby certify 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"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), 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, the Council 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 B attached

hereto as Exhibit A and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] 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, [2]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 B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - 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. _____

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[1]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".

[2]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 Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

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"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), 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 and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning , 1, _____, and ending _____, 1, _____, 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 the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

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. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

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

We have examined 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**_____

Item	Current Month	Total Year To Date	Budget Year To Date	Budget Year To Date Minus Total Year To Date
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
Type of Issue				
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 10th 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 $1,600,000
Purchase Price of Local Bonds $1,600,000

The Local Bonds shall bear interest at a rate of 3% per annum. Commencing March 1, 2013, principal and interest on the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall authorize the Commission to electronically debit its monthly payments. The Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the revenues of the leases on a Last-in/Last-out basis and a first lien on the Surplus Revenues of the Governmental Agency as provided in the Local Act. The Local Bonds shall also be secured by the Credit Line Deed of Trust of the Governmental Agency granting a first lien on the property subject to the Leases (as defined in the Supplemental and Amendatory Resolution adopted by the Issuer on May 18, 2010).

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

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:

(1) WesBanco loan to the Governmental Agency in the amount of $10,191,274 dated February 26, 2010.

Number of New Customers to Be Served: 0
Location: N/A (improvements to be transferred to Ohio County PSD and City of Wheeling).

SCHEDULE Y
DEBT SERVICE SCHEDULE

BOND DEBT SERVICE

Ohio County Development Authority

IF

20 Years

3% Interest Rate

Dated Date	2/28/11			
Delivery Date	2/28/11			

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/13	14,669	3.000%	12,000.00	26,669.00
6/1/13	14,779	3.000%	11,889.98	26,668.98
9/1/13	14,890	3.000%	11,779.14	26,669.14
12/1/13	15,002	3.000%	11,667.47	26,669.47
3/1/14	15,114	3.000%	11,554.95	26,668.95
6/1/14	15,228	3.000%	11,441.60	26,669.60
9/1/14	15,342	3.000%	11,327.39	26,669.39
12/1/14	15,457	3.000%	11,212.32	26,669.32
3/1/15	15,573	3.000%	11,096.39	26,669.39
6/1/15	15,690	3.000%	10,979.60	26,669.60
9/1/15	15,807	3.000%	10,861.92	26,668.92
12/1/15	15,926	3.000%	10,743.37	26,669.37
3/1/16	16,045	3.000%	10,623.92	26,668.92
6/1/16	16,166	3.000%	10,503.59	26,669.59
9/1/16	16,287	3.000%	10,382.34	26,669.34
12/1/16	16,409	3.000%	10,260.19	26,669.19
3/1/17	16,532	3.000%	10,137.12	26,669.12
6/1/17	16,656	3.000%	10,013.13	26,669.13
9/1/17	16,781	3.000%	9,888.21	26,669.21
12/1/17	16,907	3.000%	9,762.35	26,669.35
3/1/18	17,034	3.000%	9,635.55	26,669.55
6/1/18	17,161	3.000%	9,507.80	26,668.80
9/1/18	17,290	3.000%	9,379.09	26,669.09
12/1/18	17,420	3.000%	9,249.41	26,669.41
3/1/19	17,550	3.000%	9,118.76	26,668.76
6/1/19	17,682	3.000%	8,987.14	26,669.14
9/1/19	17,815	3.000%	8,854.52	26,669.52
12/1/19	17,948	3.000%	8,720.91	26,668.91
3/1/20	18,083	3.000%	8,586.30	26,669.30
6/1/20	18,218	3.000%	8,450.68	26,668.68
9/1/20	18,355	3.000%	8,314.04	26,669.04
12/1/20	18,493	3.000%	8,176.38	26,669.38
3/1/21	18,631	3.000%	8,037.68	26,668.68
6/1/21	18,771	3.000%	7,897.95	26,668.95
9/1/21	18,912	3.000%	7,757.17	26,669.17
12/1/21	19,054	3.000%	7,615.33	26,669.33
3/1/22	19,197	3.000%	7,472.42	26,669.42
6/1/22	19,341	3.000%	7,328.45	26,669.45
9/1/22	19,486	3.000%	7,183.39	26,669.39
12/1/22	19,632	3.000%	7,037.24	26,669.24
3/1/23	19,779	3.000%	6,890.00	26,669.00
6/1/23	19,927	3.000%	6,741.66	26,668.66
9/1/23	20,077	3.000%	6,592.21	26,669.21
12/1/23	20,227	3.000%	6,441.63	26,668.63

BOND DEBT SERVICE

Ohio County Development Authority

IF

20 Years

3% Interest Rate

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/24	20,379	3.000%	6,289.93	26,668.93
6/1/24	20,532	3.000%	6,137.09	26,669.09
9/1/24	20,686	3.000%	5,983.10	26,669.10
12/1/24	20,841	3.000%	5,827.95	26,668.95
3/1/25	20,997	3.000%	5,671.64	26,668.64
6/1/25	21,155	3.000%	5,514.17	26,669.17
9/1/25	21,314	3.000%	5,355.50	26,669.50
12/1/25	21,473	3.000%	5,195.65	26,668.65
3/1/26	21,634	3.000%	5,034.60	26,668.60
6/1/26	21,797	3.000%	4,872.35	26,669.35
9/1/26	21,960	3.000%	4,708.87	26,668.87
12/1/26	22,125	3.000%	4,544.17	26,669.17
3/1/27	22,291	3.000%	4,378.23	26,669.23
6/1/27	22,458	3.000%	4,211.05	26,669.05
9/1/27	22,626	3.000%	4,042.61	26,668.61
12/1/27	22,796	3.000%	3,872.92	26,668.92
3/1/28	22,967	3.000%	3,701.95	26,668.95
6/1/28	23,139	3.000%	3,529.70	26,668.70
9/1/28	23,313	3.000%	3,356.15	26,669.15
12/1/28	23,488	3.000%	3,181.31	26,669.31
3/1/29	23,664	3.000%	3,005.15	26,669.15
6/1/29	23,841	3.000%	2,827.67	26,668.67
9/1/29	24,020	3.000%	2,648.86	26,668.86
12/1/29	24,200	3.000%	2,468.71	26,668.71
3/1/30	24,382	3.000%	2,287.21	26,669.21
6/1/30	24,565	3.000%	2,104.34	26,669.34
9/1/30	24,749	3.000%	1,920.11	26,669.11
12/1/30	24,935	3.000%	1,734.49	26,669.49
3/1/31	25,122	3.000%	1,547.48	26,669.48
6/1/31	25,310	3.000%	1,359.06	26,669.06
9/1/31	25,500	3.000%	1,169.24	26,669.24
12/1/31	25,691	3.000%	977.99	26,668.99
3/1/32	25,884	3.000%	785.30	26,669.30
6/1/32	26,078	3.000%	591.17	26,669.17
9/1/32	26,274	3.000%	395.59	26,669.59
12/1/32	26,471	3.000%	198.53	26,669.53
	1,600,000		**533,530.53**	**2,133,530.53**

SCHEDULE Z

SPECIAL CONDITIONS

A. That the lease payments to be made to the Governmental Agency under the Leases (as that term is defined in the Supplemental and Amendatory Resolution adopted by the Governmental Agency on May 18, 2010) will be sufficient to maintain a debt service coverage of at least 120% of the maximum amount required in any year for debt service on the Local Bonds and the Prior Obligations.

B. The Governmental Agency may issue additional parity bonds upon obtaining the consent of the Authority and shall not be required to comply with the requirements of Section 4.1(b)(v) of this Agreement.

C. The Governmental Agency shall not be required to make the renewal and replacement payments set forth in Section 4.1(a)(iii) of this Agreement because Ohio County PSD is already required to make renewal and replacement fund payments.

D. The Governmental Agency shall not be required to comply with Section 2.3 or Sections 4.1(b)(iii), (iv), (vii), (xiii) or (xxi) of this Agreement as the Project shall be transferred to Ohio County Public Service District and the City of Wheeling.

E. The Governmental Agency shall not be required to comply with Section 3.1(f) and (g), Section 4.1(b)(ix) or Section 5.2 of this Agreement as the Local Bonds are secured by Lease payments, Surplus Revenues and a Deed of Trust rather than System rates and charges.

F. For all other covenants in this Loan Agreement, the Governmental Agency shall comply or, if not applicable, use its best efforts to cause the Ohio County Public Service District to comply with such covenants.

G. Any covenants contained in this Loan Agreement that is inconsistent with any of the Special Conditions shall be interpreted in such a manner so that the intent of the Special Conditions shall be followed.

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS,
SERIES 2010 A AND SERIES 2010 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

BOND ORDINANCE

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OHIO COUNTY DEVELOPMENT AUTHORITY

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS, INCLUDING WATER MAINS, A WATER STORAGE TANK AND A PUMPING STATION, WHICH UPON COMPLETION WILL BE DEEDED TO THE OHIO COUNTY PUBLIC SERVICE DISTRICT TO SUPPORT BUSINESS AND INDUSTRIAL DEVELOPMENT IN THE VICINITY OF THE FORT HENRY INDUSTRIAL BUSINESS PARK, COMMONLY KNOWN AS THE HIGHLANDS, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE OHIO COUNTY DEVELOPMENT AUTHORITY OF NOT MORE THAN $1,600,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER PROJECT BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND); AND WATER PROJECT BONDS, SERIES 2010 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF THE OHIO COUNTY DEVELOPMENT AUTHORITY:

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 7, Article 12 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The Ohio County Development Authority (the "Issuer") is a public corporation with perpetual existence and a county development authority within the meaning of the Act, duly created pursuant to an order entered by The County Commission of Ohio County (the "County Commission").

B. The Ohio County Public Service District ("Public Service District") presently owns and operates a public combined waterworks and sewerage system. However, it is deemed necessary and desirable for the support of the business and industrial development in the vicinity of the Fort Henry Industrial Business Park, commonly known as the Highlands (the "Highlands"), that there be acquired and constructed certain additions, betterments and improvements to the waterworks system of the Public Service District, as described in Exhibit A hereto, and all appurtenant facilities (the "Project" or the "Series 2010 Facilities"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to finance 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") on behalf of the West Virginia Infrastructure and Jobs Development Council. The Series 2010 Bonds shall be payable solely from the Net Revenues of the Issuer as defined herein and secured by a pledge of the same.

D. It is deemed necessary for the Issuer to issue its Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund) (the "Series 2010 A Bonds"), and the Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund) (the "Series 2010 B Bonds") in the total aggregate principal amount of $1,600,000 (collectively, the "Series 2010 Bonds") initially to be represented by two bonds, to finance the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest,

if any, on the Series 2010 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2010 A Bonds Reserve Account and the Series 2010 B Bonds 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; discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2010 Bonds; fees and expenses of the Authority and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition and 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 2010 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the Series 2010 Facilities after completion of the Project is not less than 20 years.

F. It is in the best interests of the Issuer that the Series 2010 Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 Bonds as to liens, pledge, source of and security for payment, a list of which will be attached to the Supplemental Resolution (collectively the "Prior Obligations").

The Series 2010 Bonds shall be issued on a parity with each other and with the Prior Obligations, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2010 Bonds, the Issuer will meet the requirements, if any, of the Prior Obligations to the issuance of the Series 2010 Bonds on a parity with the Prior Obligations.

H. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Series 2010 Facilities and issuance of the Series 2010 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project by the West Virginia Infrastructure and Jobs Development Council.

I. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

J. The Board of the Issuer finds and determines that there exists a continuing need for infrastructure such as that proposed herein to support business and industry development in Ohio County, and such Project as herein defined will help support business and industry development in Ohio County, and that the money or funds of the Issuer in the form of bond proceeds and the security as herein defined are necessary therefore, and that in aid thereof, the Board of the Issuer determines to fund the same as hereinafter provided on such terms as hereinafter set forth.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 2010 Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2010 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means Chapter 7, Article 12 of the Code of West Virginia, 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 2010 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

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

"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" or "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 2010 Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Closing Date" means the dates upon which there is an exchange of the Series 2010 Bonds for all or a portion of the proceeds of the Series 2010 Bonds from the Authority.

"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.

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

"Consulting Engineers" means Vaughn, Coast & Vaughn, Inc., St. Clairsville, Ohio, 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 Code of West Virginia, 1931, as amended.

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

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"County Commission" means The County Commission of Ohio County, Ohio County, West Virginia, a political subdivision of the State of West Virginia.

"Depository Bank" means the bank or banks 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 Board of the Issuer, as it may now or hereafter be constituted.

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

"Gross Revenues" means the lease revenues from a designated lease or leases to specifically described in the Supplemental Resolution, determined in accordance with generally accepted accounting principles.

"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.

"Issuer" means the Ohio County Development Authority, a public corporation with perpetual existence and a County Development Authority within the meaning of the Act, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreements to be entered into between the Authority and the Issuer, providing for the purchase of the Series 2010 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.

"Net Proceeds" means the face amount of the Series 2010 Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

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

"Operating Expenses" means the reasonable, proper and necessary costs of the Issuer, including the costs of repair, maintenance and operation of the Series 2010 Facilities and, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fiscal

agents, the Depository Bank and the Registrar (all as hereinafter 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 moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, 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 Registered Owners of 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 designed by a Paying Agent by the Issuer in the Supplemental Resolution.

"President" means such person so designated to act in such capacity by the Board of the Issuer.

"Prior Obligations" means, the obligations secured by the lease or leases described in the Supplemental Resolution.

"Project" or "Series 2010 Facilities" means the Project as described in Section 1.02B hereof and Exhibit A hereto.

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

(a) Authority Obligations;

(b) Authority Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Authority Obligations, and receipts or

certificates evidencing payments from Authority Obligations or interest coupons stripped from Authority 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; Authority 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 Authority National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Authority Obligations, provided, that said Authority 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 Authority bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended; and

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

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

"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.

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

"Series 2010 A Bonds" means the Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Ordinance.

"Series 2010 B Bonds" means the Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund), of the Issuer, authorized by this Ordinance.

"Series 2010 Bonds" means, collectively, the Series 2010 A Bonds and the Series 2010 B Bonds.

"Series 2010 A Bonds Construction Trust Fund" means the Series 2010 A Bonds Construction Trust Fund established by Section 5.01 hereby.

"Series 2010 A Bonds Sinking Fund" means the Series 2010 A Bonds Sinking Fund created by Section 5.02 hereof.

"Series 2010 B Bonds Sinking Fund" means the Series 2010 B Bonds Sinking Fund created by Section 5.02 hereof.

"Series 2010 B Bonds Construction Trust Fund" means the Series 2010 B Bonds Construction Trust Fund established by Section 5.01 hereby.

"Sinking Funds" means, collectively, the respective Sinking Funds created for the Series 2010 Bonds.

"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 2010 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2010 Bonds, and not so included may be included in another Supplemental Resolution.

"Series 2010 Facilities" means the Project and any further additions, betterments and improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $8,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body and approved by the Authority and the Issuer. The proceeds of the Series 2010 Bonds shall be applied as provided in Article VI hereof. Prior to the issuance of each series of Series 2010 Bonds, the Issuer shall receive bids and enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority and the Council.

The cost of the Project is estimated not to exceed $8,000,000, of which approximately $6,400,000 will be obtained from proceeds of a grant from the United States Economic Development Administration and approximately $1,600,000 will be obtained from proceeds for the Series 2010 A Bonds and the Series 2010 B Bonds.

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 paying a portion of the costs of the Project and paying the costs of issuance of the Series 2010 Bonds and related costs, there shall be and hereby are authorized to be issued negotiable Series 2010 Bonds of the Issuer. The Series 2010 Bonds shall be issued in two series, each as a single bond, designated respectively as "Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund)," and the "Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund)," in the aggregate principal amount of $1,600,000, and shall have such terms and be in such amounts as are set forth hereinafter or in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2010 Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the 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 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010 Bonds shall 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 2010 Bonds, all as provided in the Supplemental Resolution. The 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 the aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

Section 3.03. Execution of Bonds. The Series 2010 Bonds shall be executed in the name of the Issuer by the President, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary-Treasurer. In case any one or more of the officers who shall have signed or sealed the Series 2010 Bonds shall cease to be such officer of the Issuer before the Series 2010 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 Series 2010 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 the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2010 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 Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2010 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 Registered Owner, in accepting the Series 2010 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 Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide registered owner for value.

So long as the Series 2010 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2010 Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled 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 2010 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, register and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing 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 canceled 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 2010 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 of the Issuer as herein provided. No Registered Owner of the Series 2010 A Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2010 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Obligations. The payment of the debt service of the Series 2010 Bonds shall be secured by a first lien on the Net Revenues of the Issuer, on a parity with the lien on the Net Revenues in favor of the holders of the Prior Obligations. Such Net Revenues are hereby irrevocably pledged to such payments as the same become due on a parity with the Prior Obligations. The payment of debt service may also be secured by a deed of trust or other security as is set forth in the Supplemental Resolution.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver each series of the Series 2010 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver such Series 2010 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which such Series 2010 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver such Series 2010 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on such Series 2010 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2010 Bonds shall be in substantially the following form, 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 2010 A BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1 $_____

FOR VALUE RECEIVED, on this ____ day of _____, 2010, the OHIO COUNTY DEVELOPMENT AUTHORITY, a public corporation with perpetual existence (the "Issuer") created by The County Commission of Ohio County, West Virginia (the "County Commission"), promises to pay solely from the funds provided therefore, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of _____ DOLLARS ($_____), in installments on _____ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefore, and until payment of such installment, such interest shall be payable on March 1, June 1, September 1 and December 1 in each year, beginning _____ 1, 20__. 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 _____, _____, 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 the Council, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, dated _____, 20___.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to certain public waterworks to be transferred upon completion to the Ohio County Public Service District (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The Project and any further additions, betterments improvements and extensions thereto are herein called the "Series 2010 Facilities." 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 7, Article 12 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2010, and a Supplemental Ordinance duly adopted by the Issuer on _____, 2010 (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 this Bond 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 _____ (THE "PRIOR OBLIGATIONS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) of the Issuer and is payable on a parity with the pledge of Net Revenues in favor of the holders of the Prior Obligations and the Series 2010 B Bonds, and from unexpended proceeds of this Bond. 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 Net Revenues and unexpended proceeds of this Bond. Issuer has entered into certain covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Bond Legislation, 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 or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

Subject to the registration requirements in the Bond Legislation, 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 acquisition and construction of the Project and the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and 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 Net Revenues of the Issuer have been pledged to and will be used by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the OHIO COUNTY DEVELOPMENT AUTHORITY has caused this Bond to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary-Treasurer, and has caused this Bond to be dated as of the date first written above.

_____
President

[SEAL]

ATTEST:

_____
Secretary-Treasurer

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A 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: _____, 2010.

_____
as Registrar

_____
Authorized Officer

EXHIBIT A

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 $

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within _____ Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

[FORM OF SERIES 2010 B BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2010 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1 $_____

FOR VALUE RECEIVED, on this ____ day of _____, 2010, the OHIO COUNTY DEVELOPMENT AUTHORITY, a public corporation with perpetual existence (the "Issuer") created by The County Commission of Ohio County, West Virginia (the "County Commission"), promises to pay solely from the funds provided therefore, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of _____ DOLLARS ($_____), in installments on _____ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefore, and until payment of such installment, such interest shall be payable on March 1, June 1, September 1 and December 1 in each year, beginning _____ 1, 20__. 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 _____, _____, 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 the Council, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, dated _____, 20___.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to certain public waterworks to be transferred upon completion to the Ohio County Public Service District (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The Project and any further additions, betterments improvements and extensions thereto are herein called the "Series 2010 Facilities." 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 7, Article 12 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2010, and a Supplemental Ordinance duly adopted by the Issuer on _____, 2010 (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 this Bond 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 PROJECT BONDS, SERIES 2010 A ISSUED ON _____, 2010, PURSUANT TO THE BOND LEGISLATION ISSUED ON _____, 2010, IN THE AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2010 A BONDS") AND _____ (THE "PRIOR OBLIGATIONS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) of the Issuer and is payable on a parity with the pledge of Net Revenues in favor of the holders of the Prior Obligations and the Series 2010 A Bonds, and from unexpended proceeds of this Bond. 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 Net Revenues and unexpended proceeds of this Bond. Issuer has entered into certain covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Bond Legislation, 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 or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the

Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

Subject to the registration requirements in the Bond Legislation, 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 acquisition and construction of the Project and the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and 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 Net Revenues of the Issuer have been pledged to and will be used by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the OHIO COUNTY DEVELOPMENT AUTHORITY has caused this Bond to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary-Treasurer, and has caused this Bond to be dated as of the date first written above.

_____
President

[SEAL]

ATTEST:

_____
Secretary-Treasurer

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 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: _____, 2010.

_____
as Registrar

_____
Authorized Officer

EXHIBIT A

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 $

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within _____ Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2010 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 President is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit B" and made a part hereof, and the Secretary-Treasurer is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. "Amended Schedule A" Filing. Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and the 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 or the Issuer and from each other:

(1) Revenue Fund;

(2) Series 2010 A Bonds Construction Trust Fund; and

(3) Series 2010 B 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 or the Issuer and from each other:

(1) Series 2010 A Bonds Sinking Fund; and

(2) Series 2010 B Bonds Sinking Fund.

Section 5.03. System Revenues; Flow of Funds. A. The Net Revenues of the Issuer shall be deposited upon receipt by the Issuer 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 manner and order of priority:

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

(2) The Issuer shall next, on the first day of each month, from the moneys in the Revenue Fund, simultaneously, remit the interest payments due on the Prior Obligations;

and (ii) commencing 3 months prior to the first date of payment of interest of the Series 2010 A Bonds, remit to the Commission for deposit in the Series 2010 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will mature and become due on the Series 2010 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date; and (iii) commencing 3 months prior to the first date of payment of interest of the Series 2010 B Bonds, remit to the Commission for deposit in the Series 2010 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will mature and become due on the Series 2010 B Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 B Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, from the moneys in the Revenue Fund, (i) remit the principal payments of the Prior Obligations; (ii) commencing 3 months prior to the first date of payment of principal of the Series 2010 A Bonds, remit to the Commission for deposit in the Series 2010 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2010 B Bonds, remit to the Commission for deposit in the Series 2010 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, from the moneys in the Revenue Fund, (i) remit the reserve account payments to the Reserve Accounts of the Prior Obligations, if any; (ii) commencing 3 months prior to the first date of payment of principal of the Series 2010 A Bonds, if not fully funded upon issuance of the Series 2010 A Bonds, remit to the Commission for deposit in the Series 2010 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2010 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 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 2010 A Bonds Reserve Requirement; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2010 B Bonds, if not fully funded upon issuance of the Series 2010 B Bonds, remit to the Commission for deposit in the Series 2010 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2010 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 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 2010 B Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, from the moneys in the Revenue Fund, 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 (as previously set forth in the Prior Resolutions and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2010 A Bonds Sinking Fund and the Series 2010 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2010 A Bonds and the Series 2010 B Bonds, respectively, as the same shall become due.

All investment earnings on moneys in the Series 2010 A Bonds Sinking Fund, Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Sinking Fund and the Series 2010 B Bonds Reserve Account 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 2010 A Bonds Construction Trust Fund and Series 2010 B Bonds Construction Trust Fund, respectively, 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, if any, on the Series 2010 Bonds and then to the next ensuing principal payment due thereon.

As and when additional Bonds ranking on a parity with the Series 2010 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay any interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2010 A Bonds Sinking Fund or the Series 2010 B Bonds Sinking Fund when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2010 A Bonds or the Series 2010 B Bonds, respectively, then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2010 A Bonds Sinking Fund and the Series 2010 B Bonds Sinking Fund created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. The Issuer shall make the necessary arrangements whereby required payments into the Series 2010 A Bonds Sinking Fund and the Series 2010 B Bonds Sinking Fund shall be automatically debited from the Revenue Fund and electronically transferred to the Authority and the Commission on the dates required hereunder.

Moneys in the Series 2010 A Bonds Sinking Fund and the Series 2010 B Bonds Sinking Fund shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2010 A Bonds Reserve Account and the Series 2010 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of

servicing the Series 2010 A Bonds and Series 2010 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) deposit with the Commission the required principal and interest payments with respect to the Series 2010 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. 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 Authority in writing at any time, the Issuer shall make the necessary arrangements whereby such payment shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

C. 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 Series 2010 Facilities.

D. 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 the Authority at any time, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency

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

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

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 2010 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2010 Bonds or from other funds available to the Issuer, there shall first be deposited with the Commission in the Series 2010 A Bonds Sinking Fund or Series 2010 B Bonds Sinking Fund, as applicable, 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 2010 A Bonds or Series 2010 B Bonds, as applicable, for the period commencing on the date of issuance of the Series 2010 A Bonds or Series 2010 B Bonds, as applicable, and ending 6 months after the estimated date of completion of construction of the Project.

B. The remaining moneys derived from the sale of the Series 2010 Bonds shall be deposited with the Depository Bank in the Series 2010 A Bonds Construction Trust Fund or Series 2010 B Bonds Construction Trust Fund, as applicable, and applied solely to the payment of costs of the Project in the manner set forth in Section 6.02 hereof.

C. The Depository Bank shall act as trustee and fiduciary for the Registered Owner with respect to the Series 2010 A Bonds Construction Trust Fund and the Series 2010 B Bonds Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Series 2010 A Bonds Construction Trust Fund and the Series 2010 B Bonds Construction Trust Fund set forth in the Bond Legislation. Moneys in the Series 2010 A Bonds Construction Trust Fund and the Series 2010 B Bonds Construction Trust Fund shall be used solely to pay costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 2010 A Bonds and the Series 2010 B Bonds, respectively.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Payments for costs of the Project shall be made monthly. Except as provided in Section 6.01

hereof, disbursements from the Series 2010 A Bonds Construction Trust Fund and Series 2010 B Bonds Construction Trust Fund (except for the costs of issuance of the Series 2010 Bonds which shall be made upon request of the Issuer), shall be made only after submission to the Council 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 2010 A Bonds Construction Trust Fund and the Series 2010 B Bonds Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Series 2010 A Bonds Construction Trust Fund and the Series 2010 B 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 2010 A Bonds Construction Trust Fund and the Series 2010 B 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.

Pending such application, moneys in the Series 2010 A Bonds Construction Trust Fund and Series 2010 B Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

The Issuer shall expend all proceeds of the Series 2010 A Bonds within 3 years of the date of issuance of the Council's bonds, the proceeds of which were used to make the loan to 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 Registered Owner of the Series 2010 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2010 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 2010 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2010 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Registered Owner of the Series 2010 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Obligations. The payment of the debt service of the Series 2010 Bonds shall be secured by a first lien on the Net Revenues of the Issuer, on a parity with the lien on the Net Revenues in favor of the holders of the Prior Obligations. Such Net Revenues 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. Reserved.

Section 7.05. Transfer of the Series 2010 Facilities. Upon completion of the Project, the Series 2010 Facilities will be transferred to the Public Service District.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever payable from the Net Revenues which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2010 Bonds, without the prior written consent of the Authority. All obligations issued by the Issuer after the

issuance of the Series 2010 Bonds and payable from Net Revenues, except additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2010 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation 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 Series 2010 Bonds, and the interest thereon, upon the Net Revenues, or upon the Series 2010 Facilities or any part thereof.

The Issuer shall give the Authority and Council prior written notice of its issuance of any other obligations to be used for the Series 2010 Facilities, payable from the Net Revenues or from any grants or any other obligations related to the Project or the Series 2010 Facilities.

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

Section 7.07. Reserved.

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 Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Series 2010 Facilities at all reasonable times for the purpose of audit and examination. The Issuer shall submit to 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 Series 2010 Facilities and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall also, at least once a year, cause the books, records and accounts of the Issuer 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 the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2010 Bonds and shall submit said report to the Authority, or any other original purchaser of the Series 2010 Bonds. Such audit report submitted to the Authority shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under Authority auditing standards and, if they 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 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 Authority, or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Reserved.

Section 7.10. Reserved.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall 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 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.

The Issuer 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 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 agrees that qualified operating personnel properly certified by the State will be employed to operate the Series 2010 Facilities so long as any of the Series 2010 Bonds are outstanding.

The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Authority. Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

Section 7.12. Reserved.

Section 7.13. Reserved.

Section 7.14. Reserved.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2010 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 Series 2010 Facilities or shall cause the Public Service District to maintain such insurance. Such insurance shall initially cover the following risks and be in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured prior to acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than $1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 from claims for damage to property of others which may arise from the operation of the System.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated for the benefit of the Issuer, with limits of not less than $1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 from claims for damage to property of others which may arise from such operation of vehicles.

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(E) Fidelity Bonds will be provided as to every member, officer and employee of the Issuer having custody of the Revenue Fund or of any other funds or property of the System in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount required by the Authority and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Flood Insurance will be obtained by the Issuer if available; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

B. Construction Bonds. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Reserved.

Section 7.17. Completion of Project; Permits. The Issuer shall complete the Project as promptly as possible.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project.

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

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2010 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2010 Bonds during the term thereof is, under the terms of the Series 2010 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2010 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2010 Bonds during the term thereof is, under the terms of the Series 2010 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2010 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2010 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2010 Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than State or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2010 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2010 Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer shall take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2010 Bonds will be and remain excludable from gross income for federal income tax purposes, and shall not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer shall 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 7.21. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2010 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investment of Funds. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein and the 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 moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own 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 as 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 Series 2010 Bonds are Outstanding.

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 2010 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2010 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 2010 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2010 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 Authority, the Depository Bank, the Registrar or a Registered Owner of a Bond; or

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2010 Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the Series 2010 Facilities, (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.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2010 Bonds may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project.

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 Series 2010 Facilities 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 Series 2010 Facilities 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.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Registered Owners of the Series 2010 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 2010 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 2010 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2010 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal installments of an and interest due and to become due on the Series 2010 Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Series 2010 Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2010 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 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 2010 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2010 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2010 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the 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 Series 2010 Bonds required for consent to the above-permitted amendments or modifications.

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 2010 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 2010 Bonds.

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

Section 11.05. Conflicting Provisions Repealed; Prior Ordinances. 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.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment 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 President, the Secretary and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Wheeling Register, a qualified newspaper published and of general circulation in Ohio County, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2010 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 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. The Governing Body hereby determines that the abstract of this Ordinance as set forth in Exhibit C contains sufficient information as to give notice of the contents hereof. 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.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon and final reading hereof.

Passed on First Reading:	March 23, 2010
Passed on Second Reading:	April 6, 2010
Passed on Final Reading Following Public Hearing:	April 20, 2010

President

{C1678495.1}

CERTIFICATION

Certified a true copy of an Ordinance duly passed by Board of the OHIO COUNTY DEVELOPMENT AUTHORITY on April 6, 2010, and effective April 20, 2010.

Dated this 28th day of February, 2011.

[SEAL]

Secretary-Treasurer

{C1678495.1}

EXHIBIT A

THE PROJECT

The Project consists of (1) the construction of a water tank and (2) the construction of water lines to connect with the City of Wheeling and all appurtenances thereunto.

EXHIBIT B

[LOAN AGREEMENT]

EXHIBIT C

OHIO COUNTY DEVELOPMENT AUTHORITY

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on April 6, 2010, the Board of the Ohio County Development Authority (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of (1) a water tank and (2) water lines to connect with the City of Wheeling and all appurtenances thereunto and the financing of the cost, not otherwise provided, thereof through the issuance of not more than $1,600,000 in aggregate principal amount of Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund) and Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund) (collectively, the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement for the Bonds; authorized the execution and delivery of the Loan Agreement.

3. Provided for the payment of operating expenses and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds; directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. Provided that the Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues generated from leases of the Issuer; pledged the Net Revenues of the Issuer to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the Issuer; provided certain conditions for the issuance of additional bonds.

5. Established the events of default and the remedies of the registered owners of the Bonds; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Board of the Ohio County Development Authority at a regular meeting on April __, 2010, at 6:30 p.m., at 1500 Chapline Street, 215 City County Building, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Board is on file with the Secretary for review by interested persons during the office hours of the Issuer.

_____

Secretary

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

SUPPLEMENTAL AND AMENDATORY RESOLUTION

SUPPLEMENTAL AND AMENDATORY RESOLUTION AMENDING THE ORDINANCE TO CLARIFY THE SECURITY FOR THE SERIES 2011 BONDS; REDESIGNATING THE SERIES 2010 BONDS AS THE SERIES 2011 BONDS; PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE OHIO COUNTY DEVELOPMENT AUTHORITY WATER PROJECT BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING AND RATIFYING THE LOAN AGREEMENT WITH RESPECT TO SUCH BONDS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; DESIGNATING LEASES AND LEASE REVENUES THEREFROM THAT WILL SERVE AS SECURITY FOR THE BONDS AND AUTHORIZING AN ASSIGNMENT OF RENTS AND LEASES; AUTHORIZING A DEED OF TRUST LIEN AS ADDITIONAL SECURITY FOR THE BONDS; ESTABLISHING A REQUIRED DEBT SERVICE COVERAGE COVENANT FOR THE BONDS; AND MAKING OTHER CLARIFICATIONS REGARDING AND PROVISIONS AS TO THE BONDS.

WHEREAS, the Board (the "Governing Body") of the Ohio County Development Authority (the "Issuer") has duly and officially adopted a Bond Ordinance on April 20, 2010 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS, INCLUDING WATER MAINS, A WATER STORAGE TANK AND A PUMPING STATION, WHICH UPON COMPLETION WILL BE DEEDED TO THE OHIO COUNTY PUBLIC SERVICE DISTRICT TO SUPPORT BUSINESS AND INDUSTRIAL DEVELOPMENT IN THE VICINITY OF THE FORT HENRY INDUSTRIAL BUSINESS PARK, COMMONLY KNOWN AS THE HIGHLANDS, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE

OHIO COUNTY DEVELOPMENT AUTHORITY OF NOT MORE THAN $1,600,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER PROJECT BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND); AND WATER PROJECT BONDS, SERIES 2011 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Issuer's Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund) (the "Series 2010 A Bonds" or the "Bonds") and Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund) (the "Series 2010 B Bonds" and, together with the Series 2010 A Bonds, the "Series 2010 Bonds"), in an aggregate principal amount not to exceed $1,600,000, and has authorized the execution and delivery of a loan agreement relating to the Series 2010 A 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"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 7, Article 12, Chapter 8, Article 16 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be therein provided for;

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

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement;

WHEREAS, Section 11.01 of the Ordinance authorizes the Ordinance to be amended or supplemented in any way by a Supplemental Resolution prior to issuance of the Series 2010 Bonds;

WHEREAS, it is necessary to amend the Ordinance to provide clarification as to the security for and certain other matters relating to the Series 2010 Bonds; 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, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, that the leases and lease revenues securing the Bonds be designated, that the granting of a deed of trust lien on certain real property of the Issuer as additional security for the Bonds is authorized, that a debt service coverage covenant is established for the Bonds, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF OHIO COUNTY DEVELOPMENT AUTHORITY:

Section 1. (A) Subsection 1.02(G) of the Ordinance shall be amended and restated to read as follows:

> G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 Bonds as to liens, pledge, source of and security for payment, a list of which will be attached to the Supplemental Resolution (collectively the "Prior Obligations").
>
> The Series 2010 Bonds shall be issued on a parity with each other and with the Prior Obligations, with respect to liens, pledge and source of and security for payment and in all other respects except as specifically set forth herein or in the Supplemental Resolution. Prior to the issuance of the Series 2010 Bonds, the Issuer will meet the requirements, if any, of the Prior Obligations to the issuance of the Series 2010 Bonds on a parity with the Prior Obligations.

(B) The definition of "Operating Expenses" in Section 1.04 of the Ordinance shall be amended and restated to read as follows:

> "Operating Expenses" means any reasonable, proper and necessary costs of the Issuer, including the costs of repair and maintenance of the Series 2010 Facilities prior to their transfer to the Public Service District and, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses relating to the Series 2010 Bonds or the Series 2010 Facilities prior to such transfer, other than those capitalized as part of the Costs, fiscal agents, the Depository Bank and the Registrar (all as hereinafter defined), other than

those capitalized as part of the Costs, taxes and such other reasonable operating costs and expenses relating to the Series 2010 Facilities prior to their transfer to the Public Service District and to the leases and leased properties producing the Gross Revenues 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.

(C) Section 1.04 of the Ordinance shall be amended to add the following definition:

"Surplus Revenues" means all revenues of the Authority, including all lease revenues, that are not required for the payment of principal, interest, and related charges on any other obligations of the Issuer."

(D) Section 3.07 of the Ordinance shall be amended and restated to read as set forth below. In addition, any other references in the Ordinance to the Series 2010 Bonds being special obligations of the Issuer or to the sources of security for and payment of the Series 2010 Bonds shall be amended to read in conformity with amended Section 3.07 set forth below.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2010 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, the proceeds from any sale under the deed of trust authorized by Section 3.08, and the Surplus Revenues of the Issuer as herein provided. No Registered Owner of the Series 2010 Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2010 Bonds or the interest thereon.

(E) Section 3.08 of the Ordinance shall be amended and restated to read as follows:

Section 3.08. Security of Bonds; Lien Position with respect to Prior Obligations. The payment of the debt service of the Series 2010 Bonds shall be secured by a first lien on the revenues of those leases derived from the certain properties designated in the Supplemental

Resolution and an Assignment of Rents and Leases shared with WesBanco Bank, Inc., as owner of the Prior Obligations, subject to the intercreditor agreement to be entered into between the Authority and WesBanco Bank, Inc. (the "Intercreditor Agreement") on a Last-in/Last-out basis, meaning the Series 2010 Bonds shall not be paid from such revenues unless the Prior Obligations have been paid. Such revenues are hereby irrevocably pledged to such payments as the same become due in accordance with the above conditions. The payment of the debt service of the Series 2010 Bonds shall further be secured by a pledge of the Surplus Revenues of the Issuer. The Surplus Revenues are hereby irrevocably pledged to such payments as the same become due. Additionally, the Series 2010 Bonds are secured by a credit line deed of trust, security agreement and fixture filing from the Issuer to the trustee named therein for the benefit of the Authority, granting a lien on the real property and fixtures subject to the leases on the properties designated in the Supplemental Resolution (the "Deed of Trust"). The Deed of Trust shall grant a first lien on such real property that is on a parity and pro rata with the shared lien on such property of WesBanco Bank, Inc. and subject to the Intercreditor Agreement. A lien on and security interest in equipment located on the real property subject to the Deed of Trust may also be granted.

(F) Section 3.11 of the Ordinance shall be amended and restated to read as follows:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2010 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 President is specifically authorized and directed to execute the Loan Agreement in substantially the form attached hereto as "Exhibit B" and made a part hereof, together with any changes thereto authorized by or consistent with the Supplemental Resolution, and the Secretary-Treasurer is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

(G) The first two paragraphs of Section 5.03 of the Ordinance shall be amended and restated to read as follows:

Section 5.03. System Revenues; Flow of Funds. A. The Gross Revenues of the Issuer shall be deposited upon receipt by the Issuer 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. Notwithstanding the foregoing, with the consent of the Authority and the Council, the Issuer may make the payments required by this Section 5.03 directly from its operating accounts and shall not be required to establish the Revenue Fund. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

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

(H) Subsection 5.03(C) of the Ordinance shall be amended and restated to read as follows:

C. 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 Issuer.

(I) Section 7.03 of the Ordinance shall be amended and restated to read as follows:

Section 7.03. Security of Bonds; Lien Position with respect to Prior Obligations. The payment of the debt service of the Series 2010 Bonds shall be secured by a first lien on the revenues of those leases derived from the certain properties designated in the Supplemental Resolution and an Assignment of Rents and Leases shared with WesBanco Bank, Inc., as owner of the Prior Obligations, subject to the Intercreditor Agreement on a Last-in/Last-out basis, meaning the Series 2010 Bonds shall not be paid from such revenues unless the Prior Obligations have been paid. Such revenues are hereby irrevocably pledged to such payments as the same become due in accordance with the above conditions. The payment of the debt service of the Series 2010 Bonds shall further be secured by a pledge of the Surplus Revenues of the Issuer. The Surplus Revenues are hereby irrevocably pledged to such payments as the same become due. Additionally, the Series 2010 Bonds are secured by the Deed of Trust, which shall grant a first lien on the designated real property and fixtures that is on a parity and pro rata with the shared lien on such property of WesBanco Bank, Inc. and subject to the Intercreditor Agreement.

(J) As indicated in the Ordinance, the Series 2010 Facilities will be transferred to the Public Service District and the City of Wheeling upon completion. Accordingly, references in the Ordinance to operation of the Project, the Series 2010 Facilities or the System shall mean that the Issuer will use its best efforts to cause the Public Service District and the City of Wheeling to comply with the applicable provision. The Issuer will not be required to maintain a Renewal and Replacement Fund, and references in the Ordinance to the Renewal and Replacement Fund, including but not limited to those in Subsection 5.03(A)(5) of the Ordinance, will be of no effect.

(K) Anything in the Ordinance to the contrary notwithstanding, the assignment of rents and leases and the Deed of Trust as security for the Series 2010 Bonds and the payment of the Series 2010 Bonds from the Net Revenues and from the proceeds of sale under the Deed of Trust are subject to the Intercreditor Agreement.

Section 2. (A) The Series 2010 A Bonds shall be redesignated as the Series 2011 A Bonds and all references to 2010 Bonds accounts and funds shall be 2011 Bonds accounts and funds. The 2010 Facilities shall be redesignated as the 2011 Facilities.

(B) On April 20, 2010, the Issuer held a public hearing pursuant to a duly advertised notice and at the public hearing there were no comments or objections to the Project or the Bonds. The Issuer hereby ratifies the enactment of the Bond Ordinance follwing the public hearing.

Section 3. Pursuant to the Ordinance and the Act, this Supplemental and Amendatory Resolution is adopted and there are hereby authorized and ordered to be issued the Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of $1,600,000. The Series 2011 A Bonds shall be dated the date of delivery, shall finally mature December 1, 2032, and shall bear interest at the rate of 3% per annum. The principal and interest of the Series 2011 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2013, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2011 A Bonds. The Series 2011 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Series 2011 A Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2011 A Bonds.

Section 4. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Ordinance, as supplemented and amended by this Supplemental Resolution.

Section 5. The Issuer hereby authorizes, approves, ratifies and accepts in substantial form the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the President and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed, together with such revisions as may be approved by the President, with his execution of the Loan Agreement to serve as conclusive evidence of such approval. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 6. The Issuer hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Ordinance and approves and accepts 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 President, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 7. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Bonds under the Ordinance.

Section 8. The Issuer hereby appoints and designates Progressive Bank, Wheeling, West Virginia, to serve as the Depository Bank under the Ordinance; provided, that, if required by the owner of the Prior Obligations, WesBanco Bank, Inc., or another bank designated by or acceptable to such owner may serve as Depository Bank for the Revenue Fund.

Section 9. Series 2011 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2011 A Bonds Sinking Fund as capitalized interest.

Section 10. Series 2011 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2011 A Bonds Reserve Account.

Section 11. The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in the Series 2011 Bonds Construction Trust Fund for payment of costs of the Project, including costs of issuance of the Bonds.

Section 12. The President and Secretary-Treasurer are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Ordinance approved and

provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about February 28, 2011.

Section 13. 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 obligations of the Issuer listed under Exhibit A, attached hereto, are the "Prior Obligations" as described in the Ordinance.

Section 15. The Issuer hereby designates all leases relating to the properties as described in Exhibit B attached hereto as leases (the "Leases") which lease revenues shall be pledged as security for the Bonds in accordance with Section 3.08 of the Ordinance, as amended. The Issuer approves of the form of Assignment of Rents and Leases attached as Exhibit C hereto. The Authorized Officers of the Issuer are hereby instructed to take all actions necessary to enter into the Assignment of Rents and Leases, including the execution thereof. The Issuer approves the form of the Deed of Trust attached as Exhibit D hereto.

Section 16. The Authorized Officers of the Issuer are hereby instructed to take all actions necessary to enter into the Deed of Trust, including the execution thereof.

Section 17. The Issuer further covenants, in addition to the covenants listed in Article VII of the Ordinance, to maintain a debt service coverage of the lease revenues from the Leases of 120% of the annual debt service due on the Bonds and the Prior Obligations at all times.

Section 18. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2011 Bonds Sinking Fund and the Series 2011 Bonds Reserve Accounts shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 19. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the President is hereby authorized and directed to execute and deliver all such contracts.

Section 20. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 21. The Issuer hereby approves of the transfer of the Series 2011 Facilities to the Ohio County Public Service District and the City of Wheeling.

Section 22. The Issuer hereby authorizes the sweeping of its revenue account by the Municipal Bond Commission each month for the Series 2011 Bonds Sinking Funds and the Series 2011 A Bonds Reserve Accounts.

Section 23. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 23rd day of February, 2011.

President

{C1941644.1}

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the Board of Ohio County Development Authority on the 23rd day of February, 2011.

Dated this 28th day of February, 2011.

[SEAL]

Secretary-Treasurer

{C1941644.1}

EXHIBIT A

PRIOR OBLIGATIONS

$10,191,274 loan from WesBanco Bank, Inc. dated February 26, 2010

EXHIBIT B

LEASES

All leases derived from the property described in the attached property description.

As to 1.25 acre parcel (WesBanco):

All that certain lot or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point at the northerly line of a 90 feet wide right of way for Cabela Drive and the easterly line of a 40 feet wide right of way for an access road, said point being North 55 degrees 7 minutes 2 seconds East, 621 and 59/100 feet from the intersection of the centerline of Cabela Drive with the centerline of Bob Wise Drive; thence along the easterly line of said 40 feet wide right of way for an access road, North 27 degrees 51 minutes 35 seconds West, 160 and 46/100 feet to a point; thence by a curve to the left having an arc length of 39 and 1/100 feet, a radius of 65 and 0/100 feet, with a chord bearing North 45 degrees 03 minutes 04 seconds West, 38 and 42/100 feet to a point; thence leaving the line of said access road and along the line of land of Ohio County Development Authority North 76 degrees 10 minutes 04 seconds East, 137 and 98/100 feet to a point; thence by the same, North 72 degrees 04 minutes 16 seconds East, 246 and 51/100 feet to a point; thence by the same South 27 degrees 51 minutes 35 seconds East, 71 and 74/100 feet to a point; thence by the same South 32 degrees 58 minutes 39 seconds West, 101 and 51/100 feet to a point; thence by the same South 62 degrees 08 minutes 25 seconds West, 108 and 45/100 feet to a point at the northerly line of said 90 feet wide right of way for Cabela Drive; thence along the northerly line of said 90 feet wide right of way for Cabela Drive, South 62 degrees 08 minutes 25 seconds West, 168 and 23/100 feet to the place of beginning.

Containing 1 and 25 hundredth acres, more or less.

Being part of a 471 acre tract of land conveyed to The Ohio County Development Authority by deed dated June 19, 2003, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 743, at Page 328, and also being a part of Parcel Three (768/1000 acre tract) which was conveyed to The Ohio County Development Authority by deed dated October 15, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 746, at page 265, and also being a part of the 9 and 63/100 acre tract described as Tract 1 conveyed to The Ohio County Development Authority by Deed of Correction dated July 2, 2004, and recorded in the aforesaid Clerk's Office in Deed Book No. 752, at Page 570, and also being a part of an 18.82 acre tract described as Parcel 5 conveyed to The Ohio County Development Authority by deed dated April 1, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 758, at Page 371.

As to 0.85 acre parcel (Quiznos, WV Department of Tourism, Coldstone Creamery)

All that certain tract or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point being the northwesterly corner of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book 742, at Page 440; thence, along the West Virginia Department of Highways right of way for CR 41/9 North 13 degrees 6 minutes 16 seconds East, 80 and 41/100 feet to a point; thence, by the same North 44 degrees 32 minutes 16 seconds East, 19 and 42/100 feet to a point; thence, by the same North 86 degrees 18 minutes 25 seconds East, 257 and 86/100 feet to a point; thence continuing leaving said right of way for CR 41/9 South 3 degrees 41 minutes 35 seconds East, 169 and 78/100 feet to a point at the northerly line of said West Virginia Department of Highways right of way for Cabela Drive; thence, along said West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 306 and 19/100 feet to the place of beginning.

Containing 85 hundredth (.85) of an acre, more or less.

Being part of the same real estate conveyed to The Ohio County Development Authority by deed dated December 20, 2000, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 724, at Page 309, and also being part of the same real estate conveyed to the Ohio County Development Authority by deed dated June 19, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 743, at page 328.

As to 1.30 acre parcel (Eat-N-Park):

All that certain tract or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book No. 742, at Page 440, said point being South 78 degrees 34 minutes 28 seconds East 306 and 19/100 feet from the northwesterly corner of said right of way and being the southeast corner of a 98/100 acre parcel known as Parcel A; thence, along the easterly line of Parcel A North 3 degrees 41 minutes 35 seconds West, 169 and 78/100 feet to appoint at the southerly right of way line of CR 41/9; thence, along said southerly right of way line of CR 41/9 North 86 degrees 18 minutes 25 seconds East, 163 and 7/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9, North 85 degrees 5 minutes 7 seconds East, 127 and 99/100 feet to a point; thence continuing along said southerly right of way line of CR 41/9 South 52 degrees 5 minutes 23 seconds East, 17 and 18/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9 North 79 degrees 10 minutes 32 seconds East, 37 and 16/100 feet to a point at the Controlled Access Right of Way Line of Interstate Route 70; thence, along the Controlled Access Right of Way of Interstate Route 70 South 26 degrees 30 minutes 5 seconds West 257 and 72/100 feet to a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive; thence along said northerly line of the West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 218 and 71/100 feet to the place of beginning.

Containing one and 30 hundredth (1.30) acres, more or less.

Being part of the same real estate conveyed to The Ohio County Development Authority by deed dated December 20, 2000, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 724, at Page 309, and also being part of the same real estate conveyed to the Ohio County Development Authority by deed dated June 19, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 743, at Page 328.

As to 2.26 acre parcel (Cracker Barrel):

All that certain lot or parcel of land situate in the District of Triadelphia, County of Ohio, and State of West Virginia, being more particularly bounded and described as follows:

Beginning at a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9, said beginning point being located North 3 degrees 29 minutes 13 seconds East, 606.01 feet from a point at the centerline intersection of Cabela Drive and Interstate Route No. 70, the bearing of the centerline of Cabela Drive being North 76 degrees 55 minutes 50 seconds West at said intersection point; thence, from said beginning point through lands of Ohio County Development Authority, North 27 degrees 40 minutes 20 seconds West, 144.82 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 17 degrees 29 minutes 21 seconds East, 111.03 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 62 degrees 22 minutes 48 seconds East, 377.22 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, South 27 degrees 40 minutes 13 seconds East, 223.03 feet to a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9; thence, along a line 27.00 feet distant from the centerline of County Route 41/9, South 62 degrees 22 minutes 16 seconds West, 343.05 feet to a point marked by an iron pin; thence South 62 degrees 19 minutes 40 seconds West, 112.90 feet to the place of beginning.

Containing 98,626 square feet or 2.26 (two and twenty six hundredth) acres.

Being part of the same parcels of land conveyed to the Ohio County Development Authority by the following: Deed dated September 12, 2003, and recorded in the Office of the County Clerk of Ohio County in Deed Book No. 745, at Page 694; Deed dated February 24, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at Page 437; Deed dated February 24, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at Page 422; and Deed dated February 19, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at page 376.

EXHIBIT C

FORM OF
ASSIGNMENT OF RENTS AND LEASES

[See Tab No. 17]

EXHIBIT D

FORM OF
DEED OF TRUST

[See Tab No. 16]

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement") made as of this 18th day of February, 2011, effective the 25th day of February, 2011, by and among the **WEST VIRGINIA WATER DEVELOPMENT AUTHORITY** ("WVWDA"), acting on behalf of the **WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL** (the "Infrastructure Council"), and **WESBANCO BANK, INC.**, a West Virginia State Banking Corporation ("WesBanco"; WesBanco and WVWDA are hereinafter collectively referred to as the "Lenders").

W I T N E S S E T H:

WHEREAS, contemporaneously herewith WVWDA, acting on behalf of the Infrastructure Council, has purchased or will in the future purchase the Ohio County Development Authority's, a county development authority and public corporation with perpetual existence in Ohio County, West Virginia ("Borrower"), Water Project Bonds, Series 2010 A and Series 2010 B in the principal amount not to exceed $1,600,000 (the "Bonds") pursuant to that certain Loan Agreement or Agreements (the "Infrastructure Council Loan Agreement") between WVWDA and Borrower; and

WHEREAS, Borrower has granted to WVWDA, as collateral for the repayment of the Bonds, (i) a lien on certain property (the "Property") owned by Borrower, which property (the "Property Collateral") is more particularly described on Schedule I attached hereto, pursuant to that certain Credit Line Deed of Trust, Security Agreement and Fixture Filing of even date herewith executed by Borrower; (ii) a security interest in and an assignment of all rentals and leases relating to or arising from the Property, pursuant to that certain Assignment of Rentals and

Leases of even date herewith executed by Borrower (the "Rental Collateral") (the Property Collateral and Rental Collateral shall be collectively referred to as the "Collateral"); and (iii) a pledge of the revenues not required for the payment of principal, interest and related charges on any other obligations of the Issuer; and

WHEREAS, WesBanco has made a loan to Borrower in the principal amount of $10,191,274 (the "WesBanco Loan"), pursuant to that certain Loan and Security Agreement (the "WesBanco Loan Agreement") dated February 25, 2010, between WesBanco and Borrower; and

WHEREAS, Borrower has granted to WesBanco, as collateral for the repayment of the WesBanco Loan, (i) a first lien on the Property Collateral pursuant to that certain Deed of Trust dated February 25, 2010, executed by Borrower; and (ii) a first lien security interest in and an assignment of the Rental Collateral pursuant to that certain Collateral Assignment of Leases and Rents dated February 25, 2010, executed by Borrower; (iii) a first lien on all construction materials, plans, equipment pursuant to the WesBanco Loan Agreement; and (iv) Wesbanco Bank, Inc. Restricted Deposit Account No. 12007206, including any and all funds held therein.

WHEREAS, Lenders wish to set forth the priority with respect to their respective liens on the Rental Collateral and the Property Collateral subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The parties hereby confirm and agree that they will share a first-priority lien position with respect to the Property Collateral. The parties hereby confirm and agree that they will share a first-priority lien on the Rental Collateral provided that, upon an event of

default and acceleration of the WesBanco Loan or the Bonds, or both, WesBanco will receive payment in full on the Wesbanco Loans first in accordance with a Last-in/Last-out methodology. The relative priorities of Lenders' respective liens on the Collateral shall be as set forth in this Agreement without regard to the actual time, order or method of filing, perfection or attachment of such liens. This Agreement shall govern in all respects the interests of Lenders in the Collateral and, to the extent contrary hereto, any prior agreements between Lenders are hereby superseded and shall be of no further force and effect.

2. Lenders hereby agree to cooperate in the filing and recording of all deeds of trust, assignment of rentals and leases, financing statements and other security instruments (collectively, the "Security Documents") relating to their respective interests in the Collateral and shall, to the extent permitted by applicable law, cause all such documents to reflect that their respective interests in the Collateral are subject to the terms and conditions of this Agreement.

3. Lenders hereby agree that they shall share, on a pro rata basis (computed in accordance with the outstanding indebtedness of the Borrower to the WVWDA and WesBanco under their respective Loan Agreements, as of the date the Property Collateral in question is sold, liquidated, transferred or otherwise conveyed), the proceeds of any sale, liquidation, transfer or conveyance of any of the Property Collateral, whether occurring voluntarily or as a result of any bankruptcy, foreclosure or similar legal proceeding.

4. Lenders hereby agree that in the event of a default and acceleration of the WesBanco Loan or the Bonds, or both, the WesBanco Loan (consisting of the then outstanding balance of principal and interest, accrued interest, reasonable expenses and costs, including attorney fees) shall be paid in full first from the revenues from the Rental Collateral prior to the payment of any revenues from the Rental Collateral for the payment of the Bonds.

5. (a) In the event that Borrower defaults in its obligations to either of the Lenders, WesBanco shall have the right to exercise and enforce all rights and remedies of Lenders against any of the Collateral, including, without limitation, the right to take or retake possession or control thereof, and to hold, prepare for sale, process, sell, lease, dispose of, or liquidate the same.

(b) WVWDA shall not take any independent action to enforce its rights and remedies against any of the Collateral, including, without limitation, the right to foreclose or otherwise realize upon any of the Collateral. In the event of (1) the default by Borrower of any of its obligations under the Infrastructure Council Loan Agreement, or (2) the default by Borrower of any term or condition under the WesBanco Loan Agreement, the Lenders shall cooperate in all ways reasonably necessary to foreclose upon and sell the Collateral at the highest sale price reasonably obtainable, and the Lenders shall share pro-ratably (based on their receipt of payment from the proceeds of such foreclosure and sale) all reasonable and necessary costs of foreclosure and sale. Notwithstanding the above, if at any time WesBanco elects to exercise its rights and remedies, it shall have the exclusive right to manage any action taken to realize upon the Collateral.

(c) Wesbanco agrees to distribute any proceeds received from the sale, liquidation, transfer or conveyance of any of the Collateral in accordance with Sections 3 and 4 hereof. WVWDA agrees to execute and deliver to Wesbanco such powers of attorney and other documents as shall be necessary to effectuate this Agreement.

(d) Notwithstanding the foregoing, upon an event of default under the Infrastructure Council Loan Agreement or any of the Security Documents relating thereto, WVWDA may exercise its rights and remedies against the Collateral (i) if WesBanco refuses to

act within 30 days after receipt from WVWDA of written notice of such event of default, requesting WesBanco to take action to realize upon the Collateral, or if WesBanco does not act in a commercially reasonable manner with respect to the Collateral and WVWDA's interests therein and (ii) WVWDA gives WesBanco at least 20 days written notice of its intent to proceed. In such event, WVWDA shall distribute any proceeds received from the sale, liquidation, transfer or conveyance of any of the Collateral in accordance with Sections 3 and 4 hereof, and WesBanco shall execute and deliver to WVWDA such powers of attorney and other documents as shall be necessary to effectuate this Agreement.

6. Each Lender hereby agrees to give to the other Lenders prompt written notice of the occurrence of any event of default under its respective Loan Agreement and Security Documents.

7. Each Lender hereby waives any and all rights to affect or challenge the method or appropriateness of any action taken by the other Lender with respect to the Collateral, subject only to the requirement that in enforcing any rights with respect to or realizing upon the Collateral each Lender shall always act in a commercially reasonable manner.

8. Each Lender shall give the other Lender written notice prior to consenting to any action or failure to act by Borrower, or prior to exercising or refraining from exercising any powers or rights which it may have under or in respect of any of the Security Documents or its Loan Agreement with Borrower.

9. Under no circumstances shall either Lender accept or demand a pledge of any of Borrower's property which constitutes Collateral as collateral security for any other indebtedness of Borrower to such Lender, without first obtaining the prior written consent of the other Lender.

10. Each Lender hereby acknowledges and agrees that an event of default under the other Lender's respective Loan Agreement shall constitute an event of default under its Loan Agreement.

11. (a) Neither of the Lenders shall be liable for any error of judgment or for any action taken or omitted to be taken, except for gross negligence or willful misconduct.

(b) Without limitation of the generality of the foregoing, each Lender (1) may consult with legal counsel, independent public accountants and other experts selected by such Lender and shall not be liable for any action taken or omitted to be taken in good faith in accordance with the advice of such counsel, accountants or experts; (2) shall not be responsible to the other Lender for the performance or observance of any of the terms, covenants or conditions under its Loan Agreement or Security Documents; and (3) shall not incur any liability hereunder or under its respective Loan Agreements or Security Documents with Borrower by acting upon any notice, consent, certificate or other instrument or writing believed by such Lender to be genuine and signed or sent by the proper party.

12. Each Lender hereby agrees to execute and deliver such additional documents as may be reasonably requested by the other to evidence or effectuate the terms hereof.

13. Any notices, requests, demands or other communications required hereunder shall be effective when delivered by registered mail, postage prepaid, return receipt requested to the parties at the following addresses:

If to the Infrastructure Council:

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301
Attention: Executive Secretary

With a copy to:

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

If to WesBanco:

WesBanco Bank, Inc.
One Bank Plaza
Wheeling, West Virginia 26003
Attention: Corporate Banking

With a copy to:

James C. Gardill/Denise Knouse-Snyder
Phillips, Gardill, Kaiser & Altmeyer, PLLC
61-14th Street
Wheeling, WV 26003

And to Ohio County Development Authority:

Ohio County Development Authority
1500 Chapline Street
215 City County Building
Wheeling, WV 26003
Attention: County Coordinator

14. This Agreement shall be governed by the laws of the State of West Virginia.

15. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. Notwithstanding any provision of this Agreement, nothing contained herein shall be construed to effect a subordination or change in lien position of WVWDA or Wesbanco in favor of any third party which is not a party to this Agreement. It is the intent of WVWDA and Wesbanco that intervening lien or liens will not affect the rights of WVWDA and Wesbanco as they would exist had this Agreement not been made.

17. This Agreement may not be amended, nor any provision modified or waived, except by a writing signed by all parties hereto. The provisions of this Agreement are severable, and if any of these provisions shall be held by any court of competent jurisdiction to be unenforceable, such holding shall not affect or impair any other provision hereof. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

18. This Agreement shall terminate when either the Bonds or the WesBanco Loan has been paid in full and the respective Lender has released the respective liens on the Collateral.

19. This Agreement constitutes the written consent to borrowing required by the WesBanco Loan Agreement in connection with the Bonds.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first set forth above.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, Acting on Behalf of WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

By: _____
Its: Executive Director

WESBANCO BANK, INC.

By: _____
Michael D. Moore, Vice President

(M0694402.3)

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

The forgoing instrument was acknowledged before me 22nd this day of February, 2011, by Chris E. Jarrett the Exe. Dir. of the West Virginia WATER DEVELOPMENT AUTHORITY, a public corporation acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL, on behalf of said corporation.

My commission expires DECEMBER 21, 2017.

[SEAL]

Official Seal
Notary Public
State of West Virginia
Barbara J. Pauley
Water Development Authority
180 Association Drive
Charleston, WV 25311
My commission expires December 21, 2017

Barbara J. Pauley
NOTARY PUBLIC

STATE OF WEST VIRGINIA,

COUNTY OF OHIO, TO-WIT:

The forgoing instrument was acknowledged before me this 24 day of February, 2011, by Michael D. Moore, the Vice President of WesBanco Bank, Inc., a West Virginia banking corporation, on behalf of said corporation.

My commission expires Feb 13, 2016.

[SEAL]

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TAMARA A. BONAR
[illegible] Point Road
[illegible] West Virginia 26330
My commission expires Feb 13, 2016

Tamara A. Bonar
NOTARY PUBLIC

This instrument was prepared by: Ryan White, Jackson Kelly PLLC, P. O. Box 553, Charleston, West Virginia 25322.

{M0694402.3}

OHIO COUNTY DEVELOPMENT AUTHORITY

1500 Chapline Street
215 City County Building
Wheeling, West Virginia
26003

David J. Sims, President
Nancy Weeks, Vice President
Gregory L. Stewart, Treasurer
Phone: (304) 234-3893
Fax: (304) 234-3826

January 19, 2011

Robert D. Smith
Senior Vice President
Branch Banking and Trust Company
496 High Street
Morgantown, West Virginia 26505

Re: West Virginia Water Development Authority Loan

Dear Doug:

The Ohio County Development Authority has received an ARRA grant from the United States Economic Development Administration in the amount of approximately $6,400,000 for the purpose of constructing a water tank at the Highlands, water lines connecting to the City of Wheeling and all appurtenances. The USEDA grant requires a local match. For that purpose, the Development Authority has received a commitment for a loan from the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, in the amount of $1,600,000.

The WDA loan will be secured by (i) a deed of trust lien on certain property (described below), (ii) an assignment of the rents and leases on such property, and (iii) a pledge of any surplus revenues of the Development Authority. The property subject to the deed of trust does not secure any loan from BB&T; rather, it secures the February 2010 loan from WesBanco Bank, Inc. Accordingly, the WDA loan will have no effect on the Development Authority's loans from BB&T.

This water project is very important for continued development of the Highlands. The Development Authority has the opportunity to construct an $8,000,000 project by borrowing only $1,600,000. It is in the best interests of the Development Authority, its lenders and the citizens of Ohio County to receive the USEDA grant and construct the water project. However, in accordance with several of the Loan Agreements between BB&T and the Development Authority, we must obtain your prior written consent for the financing described above.

Please evidence your consent to the WDA loan by executing the copy of this letter included and returning it to us as soon as possible. Time is of the essence in dealing with the federal government, and a closing has been scheduled for early February. Consequently, we would appreciate BB&T's prompt response to this request.

Very truly yours,

David J. Sims, President

Consent Granted

Branch Banking and Trust Company

By: _____

Its: Sr. Vice President

OHIO COUNTY DEVELOPMENT AUTHORITY
Regular Meeting
March 23, 2010

The Ohio County Development Authority met in regular session on March 23, 2010 in the Ohio County Commission Board Room. Those in attendance were Lanny Bonenberger, Tom Cerra, Raymond Helbling, John Lucas, Tim McCormick, Andy McKenzie, David Sims, Terry Sterling, Greg Stewart, Paul Walters, Nancy Weeks, and Randy Wharton.

Approval of November 17, 2009 Meeting Minutes

Mr. Walters moved to accept the minutes from the November 17, 2009 meeting, seconded by Mr. McKenzie. Motion carried with all voting in favor.

Approval of February 23, 2010 Special Meeting Minutes

Mr. Cerra moved to accept the Special Meeting Minutes of February 23, 2010, seconded by Mr. Helbling. Motion carried with all voting in favor.

Treasurer's Report as of February 28, 2010

Mr. Stewart stated there will be a more detailed report at the next meeting. The bank balance from the last meeting was $301,019.80. There have been contributions since that date totaling $321,577.32. Our rents and CAM fees over that time totaled $1,657,771.14, for a total beginning balance of $2,280,368.26.

Total expenditures that are detailed are $2,192,145.94 – leaving balances of $88,222.32 in the Operating Account and $282,722.38 in the Construction Account.

Listed below those numbers are future commitments and available and potential funding. As you read down through those, you will see a total of money available of $327,651.

Mr. Cerra moved to approve the Treasurer's Report, seconded by Mrs. Weeks. Motion carried with all voting in favor.

Financing

Mr. Stewart stated we were successful in getting the grant funding finalized for the Water Project which includes about five miles of water line and the second water tank near The Highlands development. To secure the funding, we need to provide a twenty percent match which totals $1.6 million. It is an $8 million project. We are fortunate enough to gain that match through the West Virginia Infrastructure and Jobs Development Council. The documents you have before you include the order, which is first couple of pages, the rest of the information are pages out of the bond issue that we will perform to secure the $1.6 million. The Ohio County Development Authority is the issuer. The West Virginia Water Authority actually buys the bonds and the WVIJDC acts as the intermediary in the financing. In order to finalize this financing, you may want to make a note, we will have to meet a few times over the next month. This is considered the first reading tonight. Then, we will have to have a second reading on April 6. Then we will have to meet again on April 20 to have a public hearing- which will be advertised on April 7 and 14, just after our second reading.

The term of the note, assuming the board approves, will be for 20 years, 3 percent and our annual payments will be $107,545. This order was drafted by Samme Gee who has done all of our financial legal work since the inception of the development authority. After you take a few minutes to review the information, I ask the chair to consider a motion for approval.

Mr. Sims asked so this is not the final approval. Mr. Stewart stated this is considered the first reading. The second reading will be April 6, and a public hearing on the 20th. This will not be completely finalized until the end of April. We will then close in May to make the funds available. As I have noted further down on the agenda, the water tank bid is already out and is due back April 1. That is somewhat of a specialty item. We are only aware of three contractors in the country that perform those. CBI did the original Highlands water tank. We will ask for consideration of those bids at the April 6 meeting.

The waterline project is underway. We will have a few easements that we will have to get along the way and then we will have to ask for the City's assistance for the stretch by Wheeling Hospital along the walking trail. We are fortunate that in five miles of waterline there are only seven easements to gain.

Mr. Helbling makes a motion to approve the ordinance, seconded by Mr. Lucas. Motion carried with all voting in favor.

Bond Rating – Standard & Poor

Mr. Stewart stated I have included in your information a copy of a pamphlet from Standard & Poor's. We have sought consideration on our rating on our Sales Tax Bonds. That rating has been finalized by Standard

& Poor's and have gained a rating of triple B stable. That is an investment grade rating, which was our goal all along. We will seek to improve that rating to an A or double A as we progress.

It was asked if just Ohio County numbers are used as a benchmark. Mr. Stewart stated he did not know, they would have used our Belomar MSA statistics, so Pennsylvania was not considered in this. That is a great point, and we will try to enforce that as we move forward with them. As I said, this is our initial rating and we are very happy that it is considered investment grade.

Site Development

Buildings

Mr. Stewart stated a lot of Town Center V has opened including Allstate, H&R Block, and NiNi's Treasures. We have Tony's Nails complete, however his parents back in his part of the world have become ill. We are hopeful that he will open in April. The space is complete – even on his part.

Utilities

We are on Lot 9 – Straub – stretching those utilities from the tank side coming south across the development. That project should be completed in a few weeks. As soon as that is done, we will extend some service to those residents that live just beyond the development on Gantzer's Ridge.

Roads

Mr. Stewart stated the only two road projects we are working on for this year would be the road that sits behind Lot 9 that extends from where the interstate access comes off clear back to those residents and we look to pave back to the initial Straub entrance sometime in June. They look to open sometime in late June or early July.

Probably later in the fall we will look to extend the pavement out to the second entryway.

Continuing, Mr. Stewart stated that we look to extend Cabela Drive another 500 – 600 feet which would take it down to the end of the Town Center.

Executive Session

Mr. Sims stated we need to go into Executive Session under WV Code 6-9A-4(9) in order to discuss potential tenant and property transactions. Mrs. Weeks so moved, seconded by Mr. Sterling. Motion carried with all members present voting in favor.

The membership came out of Executive Session.

There being no further business, Mr. Cerra moved to adjourn the meeting. Seconded by Mrs. Weeks. Motion carried with all voting in favor.

David Sims, President

Gregory Stewart, Secretary/Treasurer

Ohio County Development Authority
Regular Meeting
April 6, 2010

The April 6, 2010 meeting of the Ohio County Development Authority was called to order. Those in attendance were Tom Cerra, Raymond Helbling, John Lucas, Tim McCormick, Randy Russell, David Sims, Terry Sterling, Gregory Stewart, Paul Walters, Nancy Weeks, and Randy Wharton.

Approval of March 23, 2010 Meeting Minutes

Mr. Cerra moved to accept the minutes submitted, Mrs. Weeks seconded. Motion carried with all voting in favor.

Treasurer's Report: As of October 30, 2009

Mr. Stewart stated you have before you the Treasurer's Report that begins with the balance since the last meeting - $88,222.32. We have taken in revenues of rent , CAM and miscellaneous refunds/reimbursement in the amount of $717,309.29 which gives us a balance of $805,531.61. Below that are the accounts payable runs totaling $760,433.49. We now have a bank balance with Progressive of $45,098.12.

The Construction Account balance at United is $64,081.64. After the checks taken in and the future commitments – as listed –cash available today is $672,940.00.

Mrs. Weeks, moved to accept the Treasurer's Report, seconded by Mr. Lucas. Motion carried with all voting in favor.

Financing

Federal EDA – Water Project

Mr. Stewart stated we did receive the bids for the water tank, and we will go over those in a minute.

***WVIJDC Matching Fund Loan – Order**

You have before you the proposed ordinance; this is considered the second reading of that ordinance. The Public Hearing is set for April 20, 2010 at 5 pm, and the first advertisement for that will run as a legal ad tomorrow. The second advertisement will run on April 14. Mr. Sterling moved to approve the ordinance, seconded by Mr. Helbling. Motion carried with all voting in favor.

Property TIF Plan Amendment

They have requested a map of the project area, which we will supply and I hope to hear from them by the end of April.

WVEDA Extension

Mr. Stewart stated a request for an extension has been submitted and we are waiting to hear back on that.

Site Development

No updates.

Utilities

Water Tank Bids – April 1, 2010

Mr. Stewart stated in your packet is a letter from Morgan Coast of Vaughn Coast & Vaughn recommending the Authority pass a resolution to award the Water Storage Tank Contract to Caldwell Tanks.

Two bids were received. Chicago Bridge and Iron bid $2,030,400 and Caldwell Tanks bid $1,856,000. Both bids were well under the Engineer's project estimate of $2,515,000. Mr. Coast's letter further explains his recommendation and you also have the certified bid tabulation attached.

Mrs. Weeks moved to award the contract to Caldwell Tanks, Inc., seconded by Mr. Walters. Motion carried with all voting in favor.

Waterline Bids

We hope to have the bid for the waterline project ready by mid-June.

Lot 9

Randy Russell reported that the utilities extensions across Lot 9 are near complete, and should be done in the next few weeks.

Roads

No updates

Executive Session

Mr. Sims stated we need to go into Executive Session under WV Code 6-9A-4(9) in order to discuss potential tenant and property transactions. Mrs. Weeks so moved, seconded by Mr. Sterling. Motion carried with all members present voting in favor.

The membership came out of Executive Session.

There being no further business, Mr. Cerra moved to adjourn the meeting. Seconded by Mrs. Weeks. Motion carried with all voting in favor.

The next meeting will be April 20, 2010 at 5 pm and will begin with the Public Hearing for WVIJDC Matching Fund Bond Sale.

David Sims, President

Gregory Stewart, Secretary/Treasurer

OHIO COUNTY DEVELOPMENT AUTHORITY
Regular Meeting
April 20, 2010

The April 20, 2010 meeting of the Ohio County Development Authority was called to order. Those in attendance were Raymond Helbling, John Lucas, Tim McCormick, Randy Russell, David Sims, Terry Sterling, Gregory Stewart, Paul Walters, Nancy Weeks, and Randy Wharton.

Public Hearing WVIJDC Matching Fund Bond Sale

Mr. Sims stated we need to adjourn and go into a Public Hearing for the West Virginia Infrastructure Matching Fund Bond Sale. Mr. Walters so moved, seconded by Mrs. Weeks. Motion carried with all voting in favor.

The public hearing was convened. Mr. Sims asked three times if there was anyone present from the public that wished to speak on the matter. There were none. Mr. Sims asked if any authority members wished to speak. There were none.

Mr. McCormick moved to close the public hearing, Mr. Sterling seconded the motion. Motion carried with all voting in favor.

Approval of April 6, 2010 Minutes

Mr. Sims called the meeting back to order, and asked if there was a motion to approve the April 6, 2010 meeting minutes. Mr. Walters so moved, seconded by Mr. Lucas. Motion carried with all voting in favor.

Treasurer's Report

WVIJDC Matching Fund

Mr. Stewart stated the public hearing completes the process to meet the WVIJDC requirements. The results will be submitted and the paperwork finalized.

Property TIF Plan

Mr. Stewart stated we did submit a map to them that they requested. They intend to try and get back to us before the end of the month.

Site Development

Mr. Stewart stated there are no new updates since the last meeting.

As far as utilities, the waterline bids should be prepared and out by mid-June, and Lot 9 utilities should be complete on our end in the next two weeks.

Mrs. Weeks moved to adjourn, seconded by Mr. Helbling. Motion carried with all voting in favor.

David Sims, President

Gregory Stewart, Secretary/Treasurer

OHIO COUNTY, DEVELOPMENT AUTHORITY NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on April 6, 2010, the Board of the Ohio County Development Authority (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of (1) the construction of a water tank and (2) the construction of water lines to connect with the City of Wheeling and all appurtenances thereunto (the "Series 2010 Facilities") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than $1,600,000 in aggregate principal amount of Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund) and Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund) (collectively, the "Bonds").
2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement for the Bonds; authorized the execution and delivery of the Loan Agreement.
3. Directed the continuation of a revenue fund and the disposition of the revenues of the System; provided for the payment of operating expenses and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds; directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.
4. Provided that the Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues of the Issuer; pledged the Net Revenues of the Issuer to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the Issuer; provided certain conditions for the issuance of additional bonds.
5. Established the events of default and the remedies of the registered owners of the Bonds; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Board of the Ohio County Development Authority at a regular meeting on April 20, 2010, at 6:30 p.m., at 1500 Chapline Street, 215 City County Building, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Board is on file with the Secretary for review by interested persons during the office hours of the Issuer.

By: /s/Gregory L. Stewart
Secretary/Treasurer
Int., April 7, 14, 2010
N.R. April 7, 14, 2010

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I Bonnie Baller *for the publisher of the Wheeling News Register newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:*

4-7-10 4-14-10

Given under my hand this 15th *day of* April, 2010

Sworn to and subscribed before me this 15th *day of* Apr, 2010 *at WHEELING, OHIO COUNTY, WEST VIRGINIA*

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22. 2014

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN D. FUGATE
R.D. 1, Box 125B
Dallas, West Virginia 26036
My Commission Expires Mar. 22, 2014

OHIO COUNTY DEVELOPMENT AUTHORITY NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on April 6, 2010, the Board of the Ohio County Development Authority (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of (1) the construction of a water tank and (2) the construction of water lines to connect with the City of Wheeling and all appurtenances thereunto (the "Series 2010 Facilities") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than $1,600,000 in aggregate principal amount of Water Project Bonds, Series 2010 A (West Virginia Infrastructure Fund) and Water Project Bonds, Series 2010 B (West Virginia Infrastructure Fund) (collectively, the "Bonds").
2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement for the Bonds; authorized the execution and delivery of the Loan Agreement.
3. Directed the continuation of a revenue fund and the disposition of the revenues of the System; provided for the payment of operating expenses and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds; directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.
4. Provided that the Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues of the Issuer; pledged the Net Revenues of the Issuer to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the Issuer; provided certain conditions for the issuance of additional bonds.
5. Established the events of default and the remedies of the registered owners of the Bonds; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Board of the Ohio County Development Authority at a regular meeting on April 20, 2010, at 6:30 p.m., at 1500 Chapline Street, 215 City County Building, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Board is on file with the Secretary for review by interested persons during the office hours of the Issuer.

By: /s/Gregory L. Stewart

Secretary/Treasurer

Int., April 7, 14, 2010
N.R. April 7, 14, 2010

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I Connie Bailey *for the publisher of the* **Intelligencer** *newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:*

4-7-10 4-14-10

Given under my hand this 15th *day of* April, 2010

Sworn to and subscribed before me this 15th *day of* Apr, 2010 *at WHEELING, OHIO COUNTY, WEST VIRGINIA*

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22, 2014

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN D. FUGATE
R.D. 1, Box 125B
Dallas, West Virginia 26036
My Commission Expires Mar. 22, 2014

NUMBER

AR-1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1 $1,600,000

FOR VALUE RECEIVED, on this 28th day of February, 2011, the OHIO COUNTY DEVELOPMENT AUTHORITY, a public corporation with perpetual existence (the "Issuer") created by The County Commission of Ohio County, West Virginia (the "County Commission"), promises to pay solely from the funds provided therefore, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of ONE MILLION SIX HUNDRED THOUSAND DOLLARS ($1,600,000), on March 1, June 1, September 1 and December 1 in each year, beginning March 1, 2013, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefore, and until payment of such installment, such interest shall be payable on March 1, June 1, September 1 and December 1 in each year, beginning March 1, 2013. 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 United Bank, Inc., 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 the Council, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement

SPECIMEN

by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, dated February 28, 2011.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to certain public waterworks to be transferred upon completion to the Ohio County Public Service District and the City of Wheeling (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The Project and any further additions, betterments improvements and extensions thereto are herein called the "Series 2011 Facilities." 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 7, Article 12 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on April 20, 2010, and a Supplemental Ordinance duly adopted by the Issuer on February 23, 2011 (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 this Bond 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 $10,191,274 LOAN FROM WESBANCO BANK, INC. DATED FEBRUARY 26, 2010 (THE "PRIOR OBLIGATIONS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) of the Issuer and is payable on a parity with the pledge of Net Revenues in favor of the holders of the Prior Obligations and the Series 2011 B Bonds, and from unexpended proceeds of this Bond. 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 Net Revenues and unexpended proceeds of this Bond. Issuer has entered into certain covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Bond Legislation, 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 or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

SPECIMEN

Subject to the registration requirements in the Bond Legislation, 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 acquisition and construction of the Project and the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and 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 Net Revenues of the Issuer have been pledged to and will be used by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

NUMBER

AR-1

IN WITNESS WHEREOF, the OHIO COUNTY DEVELOPMENT AUTHORITY has caused this Bond to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary-Treasurer, and has caused this Bond to be dated as of the date first written above.

President

SPECIMEN

[SEAL]

ATTEST:

Secretary-Treasurer

SPECIMEN

NUMBER

AR-1

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 A 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: February 28, 2011.

UNITED BANK, INC.
as Registrar

SPECIMEN

Authorized Officer

AR-1

EXHIBIT A

RECORD OF ADVANCES

SPECIMEN

	AMOUNT	DATE		AMOUNT	DATE
(1)	$321,059.96	02/28/11	(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 $

NUMBER

AR-1

SPECIMEN

EXHIBIT B
SCHEDULE OF ANNUAL DEBT SERVICE

BOND DEBT SERVICE

Ohio County Development Authority

IF

20 Years

3% Interest Rate

Dated Date 2/28/11

Delivery Date 2/28/11

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/13	14,669	3.000%	12,000.00	26,669.00
6/1/13	14,779	3.000%	11,889.98	26,668.98
9/1/13	14,890	3.000%	11,779.14	26,669.14
12/1/13	15,002	3.000%	11,667.47	26,669.47
3/1/14	15,114	3.000%	11,554.95	26,668.95
6/1/14	15,228	3.000%	11,441.60	26,669.60
9/1/14	15,342	3.000%	11,327.39	26,669.39
12/1/14	15,457	3.000%	11,212.32	26,669.32
3/1/15	15,573	3.000%	11,096.39	26,669.39
6/1/15	15,690	3.000%	10,979.60	26,669.60
9/1/15	15,807	3.000%	10,861.92	26,668.92
12/1/15	15,926	3.000%	10,743.37	26,669.37
3/1/16	16,045	3.000%	10,623.92	26,668.92
6/1/16	16,166	3.000%	10,503.59	26,669.59
9/1/16	16,287	3.000%	10,382.34	26,669.34
12/1/16	16,409	3.000%	10,260.19	26,669.19
3/1/17	16,532	3.000%	10,137.12	26,669.12
6/1/17	16,656	3.000%	10,013.13	26,669.13
9/1/17	16,781	3.000%	9,888.21	26,669.21
12/1/17	16,907	3.000%	9,762.35	26,669.35
3/1/18	17,034	3.000%	9,635.55	26,669.55
6/1/18	17,161	3.000%	9,507.80	26,668.80
9/1/18	17,290	3.000%	9,379.09	26,669.09
12/1/18	17,420	3.000%	9,249.41	26,669.41
3/1/19	17,550	3.000%	9,118.76	26,668.76
6/1/19	17,682	3.000%	8,987.14	26,669.14
9/1/19	17,815	3.000%	8,854.52	26,669.52
12/1/19	17,948	3.000%	8,720.91	26,668.91
3/1/20	18,083	3.000%	8,586.30	26,669.30
6/1/20	18,218	3.000%	8,450.68	26,668.68
9/1/20	18,355	3.000%	8,314.04	26,669.04
12/1/20	18,493	3.000%	8,176.38	26,669.38
3/1/21	18,631	3.000%	8,037.68	26,668.68
6/1/21	18,771	3.000%	7,897.95	26,668.95
9/1/21	18,912	3.000%	7,757.17	26,669.17
12/1/21	19,054	3.000%	7,615.33	26,669.33
3/1/22	19,197	3.000%	7,472.42	26,669.42
6/1/22	19,341	3.000%	7,328.45	26,669.45
9/1/22	19,486	3.000%	7,183.39	26,669.39
12/1/22	19,632	3.000%	7,037.24	26,669.24
3/1/23	19,779	3.000%	6,890.00	26,669.00
6/1/23	19,927	3.000%	6,741.66	26,668.66
9/1/23	20,077	3.000%	6,592.21	26,669.21
12/1/23	20,227	3.000%	6,441.63	26,668.63

NUMBER

AR-1

SPECIMEN

BOND DEBT SERVICE

Ohio County Development Authority

IF

20 Years

3% Interest Rate

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/24	20,379	3.000%	6,289.93	26,668.93
6/1/24	20,532	3.000%	6,137.09	26,669.09
9/1/24	20,686	3.000%	5,983.10	26,669.10
12/1/24	20,841	3.000%	5,827.95	26,668.95
3/1/25	20,997	3.000%	5,671.64	26,668.64
6/1/25	21,155	3.000%	5,514.17	26,669.17
9/1/25	21,314	3.000%	5,355.50	26,669.50
12/1/25	21,473	3.000%	5,195.65	26,668.65
3/1/26	21,634	3.000%	5,034.60	26,668.60
6/1/26	21,797	3.000%	4,872.35	26,669.35
9/1/26	21,960	3.000%	4,708.87	26,668.87
12/1/26	22,125	3.000%	4,544.17	26,669.17
3/1/27	22,291	3.000%	4,378.23	26,669.23
6/1/27	22,458	3.000%	4,211.05	26,669.05
9/1/27	22,626	3.000%	4,042.61	26,668.61
12/1/27	22,796	3.000%	3,872.92	26,668.92
3/1/28	22,967	3.000%	3,701.95	26,668.95
6/1/28	23,139	3.000%	3,529.70	26,668.70
9/1/28	23,313	3.000%	3,356.15	26,669.15
12/1/28	23,488	3.000%	3,181.31	26,669.31
3/1/29	23,664	3.000%	3,005.15	26,669.15
6/1/29	23,841	3.000%	2,827.67	26,668.67
9/1/29	24,020	3.000%	2,648.86	26,668.86
12/1/29	24,200	3.000%	2,468.71	26,668.71
3/1/30	24,382	3.000%	2,287.21	26,669.21
6/1/30	24,565	3.000%	2,104.34	26,669.34
9/1/30	24,749	3.000%	1,920.11	26,669.11
12/1/30	24,935	3.000%	1,734.49	26,669.49
3/1/31	25,122	3.000%	1,547.48	26,669.48
6/1/31	25,310	3.000%	1,359.06	26,669.06
9/1/31	25,500	3.000%	1,169.24	26,669.24
12/1/31	25,691	3.000%	977.99	26,668.99
3/1/32	25,884	3.000%	785.30	26,669.30
6/1/32	26,078	3.000%	591.17	26,669.17
9/1/32	26,274	3.000%	395.59	26,669.59
12/1/32	26,471	3.000%	198.53	26,669.53
	1,600,000		**533,530.53**	**2,133,530.53**

NUMBER

AR-1

ASSIGNMENT

SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within _____ Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

Bond Number	Principal Amount	Date of Bond
No. AR-1	$1,600,000	February 28, 2011

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.
Charleston, West Virginia

Authorized Representative

THIS IS A CREDIT LINE DEED OF TRUST

CREDIT LINE DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS CREDIT LINE DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made this 28th day of February, 2011, effective as of the 28th day of February, 2011, by and between the **OHIO COUNTY DEVELOPMENT AUTHORITY**, a county development authority and public corporation with perpetual existence in Ohio County, West Virginia whose address is 1500 Chapline Street, 215 City County Building, Wheeling, West Virginia 26003 ("Grantor"), to **CHRIS JARRETT**, a resident of Kanawha County, West Virginia, whose business address is 180 Association Drive, Charleston, West Virginia 25311, as Trustee, for the benefit of the **WEST VIRGINIA WATER DEVELOPMENT AUTHORITY**, a body corporate and governmental instrumentality of the State of West Virginia whose address is 180 Association Drive, Charleston, West Virginia 25311 ("Secured Party"), as the beneficial holder of the Secured Obligation (as hereinafter defined), under that certain loan agreement between the Grantor and the Secured Party, dated as of February 28, 2011 (the "Loan Agreement") in connection with the issuance of the Grantor's Water Project Bonds, Series 2011 A (the "Series 2011 A Bonds" or the "Bonds"). The Secured Party has issued a binding letter of commitment to loan $1,600,000 to the Grantor through the purchase of the Series 2011 A Bonds.

WITNESSETH:

That for and in consideration of the indebtedness and trusts hereinafter set forth and of the sum of Ten Dollars ($10.00), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby **GRANT** and **CONVEY** unto the Trustee, with power of sale, upon the conditions hereinafter set forth, all of the following:

(A) All of those certain lots, tracts or parcels of real estate, together with the improvements now or hereafter constructed and situate thereon and all appurtenances thereunto belonging or in any wise appertaining, situate and being in the Triadelphia District of Ohio County, West Virginia, and more particularly described on Exhibit A hereto attached and by this reference incorporated in and made a part of this Deed of Trust.

(B) All right, title and interest of Grantor now owned or hereafter acquired in and to any and all sidewalks, alleys, roadways, drives, lanes, streets and all strips and gores of land adjacent to or used in connection with such real estate and all easements and rights of way in connection therewith.

(C) All buildings, improvements and fixtures of every kind, and all machinery, equipment and property which are or shall be attached to, or be deemed to be, fixtures and a part of the real estate herein conveyed.

(D) All rentals, income, payments, receipts, issues and profits that may accrue from the aforesaid real estate and improvements or any part thereof, including all proceeds, both

cash and non-cash, of the foregoing; provided, however, that, so long as Grantor shall not be in default hereunder, Grantor shall be entitled to collect and receive all said rents, income, issues and profits.

All property described above, together with the real estate described above, shall secure the indebtedness herein described and covered by this Deed of Trust, and all the foregoing property, interests in property and other rights and interests are herein sometimes referred to collectively as the "Property." The lien on the Property granted herein shall be a first lien on the Property that is on a parity and pro rata with the shared lien on the Property held by WesBanco Bank, Inc. securing the note held by WesBanco Bank, Inc., dated February 26, 2010 (the "Prior Obligations") (subject to last-in, last-out with respect to the property described in Paragraph D, above). The rights and remedies of the Deed of Trust and the deed of trust securing the Prior Obligations are subject to an intercreditor agreement entered into between the Secured Party and WesBanco Bank, Inc. and recorded contemporaneously herewith (the "Intercreditor Agreement").

TO HAVE AND TO HOLD the Property unto the Trustee and its successor in trust forever; and Grantor does hereby covenant to and with the Trustee and the Secured Party that Grantor will **WARRANT GENERALLY** the Property; that Grantor has the right to convey the Property to the Trustee; that the same is free from any and all liens and encumbrances other than the lien on the Property held by WesBanco Bank, Inc. securing the Prior Obligations and the real estate taxes which have been assessed but which are not yet due and payable, and other exceptions, if any, which are approved in writing by the Secured Party; that the Trustee will have quiet possession thereof; and that Grantor will execute such further assurances of the Property as may be requisite, including, but not limited to, the execution and delivery of financing statements and such other instruments as Secured Party may require to impose the lien hereof more specifically upon any item or items of property, or rights or interests therein, covered by this Deed of Trust.

IN TRUST NEVERTHELESS to secure the Grantor's obligations under the Loan Agreement and Bond Ordinance duly enacted by the Grantor on April 20, 2010, as supplemented by a Supplemental and Amendatory Resolution duly adopted by the Grantor on February 23, 2011 (collectively, the "Bond Ordinance"), specifically including without implied limitation the obligation thereunder to make all payments of the principal, premium, if any, and interest on the Bonds issued pursuant to the Bond Ordinance in the aggregate principal amount not to exceed One Million Six Hundred Thousand Dollars ($1,600,000), and also to secure the payment of any and all extensions, modifications, substitutions and/or renewals of the indebtedness, or any part thereof, however changed in form, manner or amount, together with all the interest that may be due thereon (collectively, the "Secured Obligations").

This Deed of Trust is intended to constitute a security agreement, governed by the Uniform Commercial Code of West Virginia (the "Code"), with respect to any part of the Property which might now or hereafter be characterized as personal property or fixtures and with the property described below, and Grantor does hereby **GRANT** to the Secured Party a security interest therein and in all revenues of the Grantor not required for the payment of principal of or interest or related charges on other obligations of the Grantor. On default hereunder or under the

Loan Agreement, in addition to the rights, remedies and powers herein set forth, Secured Party and the Trustee shall have, as to any and all fixtures and personal property covered by this Deed of Trust, all rights, remedies and powers of a secured party under the Code. The Grantor will, from time to time as requested by the Trustee or Secured Party, execute, acknowledge and deliver any financing statement, renewal affidavit, certificate, continuation statement, inventory or other document that the Trustee or Secured Party might request in order to perfect, protect, preserve, continue, extend or maintain the security interest created by and the priority of this Deed of Trust and will, on demand, pay any expenses incurred by the Trustee and Secured Party, or either of them, in the preparation, execution and filing of any such documents.

Grantor covenants, represents, warrants and agrees as follows:

1. Grantor will, so long as the Secured Obligations or any part thereof remains unpaid: (a) pay as and when due and payable all taxes, assessments and other governmental charges and fees that may be levied or assessed against the Property, including the buildings and improvements now situate on the Property, or that may hereafter be erected thereon, and any improvements and additions made therein or thereunto from time to time and will furnish annually to Secured Party receipts showing the payment of such taxes, assessments, charges and fees; (b) have and keep the building and improvements now situate on the Property or that may hereafter be erected thereon, and all other insurable property covered by this Deed of Trust, constantly insured against the loss or damage by fire and such other causalities, contingencies and hazards as Secured Party may require, in one or more responsible and solvent insurance companies authorized to transact business in the State of West Virginia approved by Secured Party, and in an amount satisfactory to Secured Party, with a standard mortgage clause, provide for written notice of cancellation to Secured Party of not less than 30 days, non-contributory, providing that loss or damage shall be payable to Secured Party as Secured Party's interest may appear, and will pay the premiums for such insurance as the same become due and payable and deliver the policy or policies of such insurance and all renewals thereof, to Secured Party, and, if such Property shall be damaged by fire or other casualty insured against, Secured Party shall be entitled to receive the proceeds of such insurance to the extent of the unpaid balance of the Secured Obligations and shall apply such proceeds, in Secured Party's discretion, to the Secured Obligations or to restore the Property; (c) keep and maintain the Property in good condition and repair and not abandon the same, or any part thereof, not commit or permit the commission of waste on or in the Property, or any part thereof, or permit any building or improvement to be removed, destroyed, demolished or structurally altered in whole or in part, and Grantor shall comply, and cause all occupants of the Property or those in possession thereof to comply, with all laws, ordinances, rules and regulations relating to the use or maintenance of the Property and with all requirements, directions and orders and notices of violations thereof issued by any governmental agency, body or officer; (d) permit the Trustee or Secured Party, or either of them, or their agents, to enter and inspect the Property at all reasonable times; (e) pay to the Trustee or to Secured Party, upon demand, any and all sums of money, including all costs, expenses and reasonable attorneys' fees, which the Trustee or Secured Party, or either of them, may incur or expend in any action or proceeding that may concern the Property, or any part thereof or interest therein, including without limitation any eminent domain proceeding, or any action or proceeding to sustain the lien of this Deed of Trust or its priority or in defending any party thereto, or any party secured hereby, against the liens, demands or claims of title of any

person, firm or corporation, asserting priority over this Deed of Trust, or asserting title adverse to the title under this Deed of Trust, or asserting title adverse to the title under which the Trustee holds or in connection with any action to foreclose this Deed of Trust, or to recover any indebtedness secured hereby; and (f) otherwise to perform as and when required each and every obligation required under the Loan Agreement and by the Secured Obligations.

2. In the event Grantor: (a) fails to make any payment required or fails to comply with, perform or carry out any of the provisions of Paragraph 1 hereof; (b) fails to perform any of the terms, covenants or agreements by Grantor to be performed under this Deed of Trust; or (c) is otherwise in default under this Deed of Trust, including, but not limited to failure to pay advances made by Secured Party to protect the lien and security hereof as provided herein and interest on any future advances and all other items of the Secured Obligations when due, then, and in any such event, Secured Party shall have the right, without notice to or demand upon Grantor or any other person, to make any such payment, take any such action or do any such thing as, in the exercise of Secured Party's discretion, may be determined to be reasonably necessary to protect the lien and security hereof as fully and completely as if Grantor made each and every such payment when due, and kept, complied with, performed and carried out the provisions of said Paragraph 1 in every respect. Without limiting the generality of the foregoing, Secured Party may, in any such event: (a) obtain the required insurance covering the Property and pay the premiums thereon or pay any unpaid premiums on any insurance procured by Grantor; (b) pay said taxes, assessments and other governmental charges and fees together with any penalties and interest accrued thereon, and redeem the Property from a tax sale if it has been sold, and shall be subrogated to the lien of the governmental body to which such payment was made; (c) make and pay for any and all repairs which Secured Party deems necessary to place or keep the Property in good condition and repair; (d) stop or mitigate waste on or in the Property or any part thereof; (e) stop or prevent the removal, destruction, demolition or structural alteration of any building or improvement on the Property; (f) stop or prevent the violation of any law, ordinance, rule or regulation relating to the use or maintenance of the Property or of any requirement, direction or order or notice of violation thereof issued by any governmental agency, body or officer; and, (g) pay all or any part of any sum or sums of money that may be due or payable under the provisions of Paragraph 1 hereof; and Grantor hereby promises to pay to Secured Party, upon demand, any and all sums of money paid out or expended by Secured Party, for any of the purposes set out in this Paragraph 2, together with interest thereon from the date of payment at an annual rate equal to the rate of interest accruing on the principal of the Bonds (the "Default Rate"), and agrees that any sum or sums of money so paid by Secured Party or by the Trustee, or either of them, shall be collectible as such, all without waiver of any right arising from the breach of or default in the performance of any warranty, covenant, condition, provision or agreement herein contained or contained in the Loan Agreement, including the right to enter and take possession of the Property, and rent and manage the same, and the right to foreclose this Deed of Trust; but nothing herein contained shall be construed as imposing any duty or obligation upon Secured Party, or upon the Trustee, to pay any such sum or sums of money herein authorized to be paid, or to take any other action authorized hereunder.

3. A. For the purposes of this Deed of Trust: (a) "hazardous materials" means and includes petroleum products, flammable explosives, radioactive materials, asbestos or any material containing asbestos, polychlorinated biphenyls or any hazardous, toxic or dangerous

waste, substance or material defined as such or defined as a hazardous substance or other similar term by, in or for the purposes of any environmental laws; and, (b) "environmental laws" means any "superfund" or "superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any hazardous materials as may now or at any time hereafter be effect, including, but not limited to, the Comprehensive Response, Compensation and Liability Act and all regulations promulgated thereunder.

B. To the best of Grantor's knowledge, both Grantor and the Property are in compliance with all environmental laws.

C. At any time during the term of the loan secured by this Deed of Trust, Grantor shall provide Secured Party, at the expense of Grantor, with such reports of inspection or audits of the Property as Secured Party may request, prepared by qualified consultants approved by Secured Party, certifying as to the presence or absence of hazardous materials on the Property, and Grantor shall permit Secured Party, its agents and employees, to inspect or audit the Property, and for such purpose to enter upon the Property and to conduct all such tests as Secured Party shall determine to be necessary.

D. Grantor shall not place or permit to be placed on the Property any hazardous materials. If, at any time, it is determined by Secured Party that hazardous materials are or may be located on the Property which, under any applicable environmental laws, requires special handling in collection, storage, treatment or disposal, Grantor shall, within thirty days after receiving written notice thereof, take or cause to be taken, at its sole expense, such actions as may be necessary to comply with all applicable environmental laws.

E. To the extent allowable under law, Grantor shall indemnify Secured Party and the Trustee and shall hold Secured Party and the Trustee harmless from and against all loss, damage and expense, including without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims, that Secured Party or the Trustee may incur as the result of or in connection with the assertion against Secured Party or the Trustee of any claim directly or indirectly, in whole or in part, as to the presence or removal of any hazardous materials, or relating to any activities on or affecting the Property, whether prior to or during the term of the loan secured by this Deed of Trust, and whether such activity was carried on by Grantor or any predecessor in interest of Grantor or any other person. Grantor shall promptly notify Secured Party and the Trustee in writing of any order or pending or threatened action by any regulatory agency or other governmental body, or any claims made by any third party relating to environmental laws of hazardous materials on or emanations from the Property and shall promptly furnish Secured Party and the Trustee with copies of any correspondence or legal pleadings in connection therewith. Secured Party and the Trustee shall have the right, but absolutely no duty, to take any action they deem necessary or desirable, including without limitation appearing in or defending any such claims or actions, all at the cost of Grantor.

F. The obligations and liabilities of Grantor under this Paragraph shall survive any foreclosure or the delivery of a deed in lieu of foreclosure of this Deed of Trust.

4. The occurrence of any of the following events shall constitute an event of default hereunder (hereinafter called an "Event of Default"), and, upon the occurrence of any Event of Default, the Secured Obligations shall at the option of Secured Party, subject to the terms of the Loan Agreement and any notices required under the Loan Agreement, immediately become due and payable without notice to or demand on Grantor, or any other person: (a) if default shall be made in the performance of the Secured Obligations or the payment of any required payments under the Loan Agreement or this Deed of Trust or the interest thereon; (b) if default shall be made in the performance of the Prior Obligations or the payment of any required payments under the agreement underlying the Prior Obligations or deed of trust securing such transaction; (c) if default shall be made in the payment, as and when due and payable, of any tax, assessment or other governmental charge or fee or of any insurance premium or if the required insurance is not effected by Grantor or the policies delivered to Secured Party as herein required; (d) if there shall be a breach of or default in the performance of any covenant, condition, agreement, warranty or provision contained in the Loan Agreement or this Deed of Trust; (e) if Grantor shall become insolvent or make an assignment for the benefit of creditors, or if any petition for bankruptcy or arrangement pursuant to the Federal Bankruptcy Code, or any similar federal or state law, shall be filed by or against any of Grantor; (f) if any representation or warranty made or furnished to Secured Party by Grantor in connection with this Deed of Trust proves to have been substantially untrue; (g) if there shall now or hereafter exist upon the Property, or any part thereof, any claim, lien or encumbrance, other than the lien on the Property held by WesBanco Bank, Inc. securing the Prior Obligations, real estate taxes assessed but not yet due and payable or other liens and encumbrances, if any, mentioned above, which is or might be superior to the lien of this Deed of Trust, including without limitation, any mechanic's, materialmen's or similar lien (whether or not Secured Party had prior notice thereof); or (h) if Grantor shall do or suffer to be done any act or thing which would impair the security for the Secured Obligations.

5. If any one or more Events of Default shall occur and be continuing, beyond any applicable grace period, any one or more of the following rights and remedies shall exist, any two or more of which may be exercised concurrently, independently or successively in any order whatsoever, subject to the terms of the Intercreditor Agreement so long as the Prior Obligations are outstanding:

A. The Trustee or Secured Party may forthwith, without notice, separately or jointly: (a) enter into and upon all of the Property, either in person or by agent, and take possession of the Property without process of law, without liability to Grantor or other owner or owners of the Property, and manage and rent the same, or any part thereof, collect and receive the rents, issues and profits thereof (past due, due or become due) and apply the same to the payment of the Secured Obligations, after first deducting the costs and expenses incurred in managing the Property and in collecting said rents, issues and profits (including a commission of 10% of the total amount collected, which shall be paid to the Secured Party, or to the Trustee, as the case may be, for managing the same and collecting and disbursing said rents, issues and profits accruing therefrom), and after deducting such further amount or amounts as may be necessary to pay or reimburse said Secured Party and the Trustee for any sum or sums of money paid by them, or any of them, under the provisions hereof, together with interest thereon at the Default Rate to the date of payment; or (b) have a receiver appointed by any court having jurisdiction to

take charge of the Property and collect, receive and apply the rents, issues and profits thereof. It is understood and agreed by and between the parties hereto that nothing herein contained shall be construed as a substitute for, or in derogation of, the right to foreclosure this Deed of Trust or as imposing any duty or obligation upon Secured Party or upon the Trustee, or any of them, to take charge of the Property or to collect said rents, issues or profit or to have a receiver appointed for such purposes.

B. Without notice to or demand on Grantor or any other person, Secured Party may, at its option, declare the Secured Obligations to be immediately due and payable and upon the exercise of said option the Secured Obligations may be collected by proper action, foreclosure of this Deed of Trust or any other legal or equitable proceeding.

C. At any time after the exercise by Secured Party of the option to declare the Secured Obligations to be immediately due and payable, the Trustee, upon the written request of Secured Party, shall foreclose upon and sell the Property to satisfy the Secured Obligations at public auction at the front door of the Courthouse of Ohio County, West Virginia, for cash in hand on the day of the sale, after first giving notice of such sale by publishing such notice in a newspaper of general circulation published in Ohio County, West Virginia or, if there be no such newspaper(s), in a qualified newspaper(s) of general circulation in said County once a week for two successive weeks preceding the day of sale and after giving notice to Grantor as provided in Paragraph 10 at least 20 days prior to the day of sale. A copy of a notice of such sale shall be served on the Grantor by certified mail, return receipt requested, directed to the address described in Paragraph 10 hereof or such other address given to the Secured Party in writing. A notice shall be deemed complete when such notice is mailed to the aforesaid address, notwithstanding the fact that such mail may be returned as refused or undeliverable. A copy of such notice shall be served by certified mail, at least 20 days prior to the sale, upon any subordinate lien holder who has previously notified the Secured Party by certified mail of the existence of a subordinate lien. The address to which such notice to Beneficiary shall be mailed is described in Paragraph 10 hereof. Grantor hereby waives personal service of notice of any sale made hereunder, upon Grantor, its devisees, agents, successors or assigns, and also waives the posting of notice of sale at the courthouse. Secured Party may direct the Trustee to sell all or part of the Property and sales may be in such lots, parcels or other units and in such order as the Trustee determine to be most likely to maximize the total sales price, and Secured Party may become the purchaser of the Property so sold. Out of the proceeds of such sale the Trustee shall pay, first, the costs and expenses of execution this trust, including an amount equal to 2% of the gross proceeds of sale, or the sum of One Hundred Dollars ($100.00), whichever amount shall be greater, to the Trustee, or to the one so acting, as his or their commission hereunder; second, to Secured Party and the Trustee all moneys which they or any of them may have paid for taxes, assessments or other governmental charges or fees, insurance, repairs, court costs, and all other costs and expenses incurred or paid under the provisions of this Deed of Trust, together with interest thereon at the Default Rate from the date of payment; third, to Secured Party the full amount due and unpaid on the note and all interest accrued thereon to date of payment; fourth, to the holder of any other lien or liens or record, in the order of their legal priority, such sums as may be due thereon, but such payment may be made or may not be made, in whole or in part, within the sole discretion of the Trustee; and, fifth, the balance, if any, to Grantor, Grantor's heirs, personal representatives, successors, grantees or assigns, upon delivery of and surrender to

the purchaser or purchasers of possession of the Property less the expense, if any, of obtaining such possession.

6. Grantor agrees that any sale made hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale.

7. The Trustee is hereby authorized to act by agent or attorney in the execution of this trust, and it shall not be necessary for the Trustee to be present in person at any foreclosure sale hereunder.

8. It is hereby expressly covenanted and agreed by all parties hereto that Secured Party may, at any time and from time to time hereafter, without noticed to or consent from either Grantor or the Trustee, appoint and substitute another trustee or trustees, corporations or persons, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said successor trustee or trustees of the Trustee herein named, or of any substituted trustee or trustees in case said right of appointment is exercised more than once, the new and substituted trustee or trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the Property which are vested in and conferred upon the Trustee herein named, and such new and substituted trustee or trustees shall be considered the successors and assigns of the Trustee that is named herein within the meaning of this instrument, and subscribed in its place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to and the book and page of record of this Deed of Trust, and the description of the real estate herein described, which instrument, executed and acknowledged by Secured Party and recorded in the office of the Clerk of the County Commission of Ohio County shall be conclusive proof of the proper substitution and appointment of such successor trustee or Trustee, and notice of such proper appointment and substitution to all parties in interest.

9. THIS IS A CREDIT LINE DEED OF TRUST FOR THE PURPOSES OF W.VA. CODE §38-1-14, AND SECURES A MAXIMUM AMOUNT NOT TO EXCEED $1,600,000, and this Deed of Trust is also security for the payment of interest on such principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by either Secured Party or Trustee pursuant to the provisions of this Deed of Trust. This Deed of Trust secures future advances that are intended to be obligatory, and that Secured Party has agreed to make in accordance with the provisions of the Loan Agreement, Bond Ordinance and this Deed of Trust.

10. A copy of any notice of trustee's sale under this Deed of Trust shall be served on Grantor by certified mail, return receipt requested, directed to Grantor at the address stated below or such other address given to Secured Party in writing by Grantor, subsequent to the execution and delivery of this Deed of Trust. Any other notice shall be effective upon the deposit of such notice, in writing, in the regular United States mail, postage prepaid, addressed to the party or parties who receive such notice at the following addresses or at such other addresses any such party may give to the other parties in writing:

To Grantor:

Ohio County Development Authority
Attn: County Administrator
1500 Chapline Street
215 City County Building
Wheeling, WV 26003

To Secured Party:

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311-1751
Attn: Executive Director

To Trustee:

Chris Jarrett
Executive Director
180 Association Drive
Charleston, WV 25311-1751

11. No failure of Secured Party or the Trustee to exercise any option herein contained shall constitute a waiver of any rights or privilege herein given or granted to Secured Party or the Trustee, and a waiver by Secured Party or the Trustee of the right to exercise any option as to any breach or default shall not constitute a waiver of the right to exercise the same option, or other option herein contained, as to another or any continuing or subsequent breach or default.

12. This Deed of Trust shall be governed by the laws of the State of West Virginia, and, if any term or provision of this Deed of Trust contravenes or is in conflict with any law of the State of West Virginia or any other applicable law or regulation, such term or provision is amended and modified to conform with such law.

13. All covenants, agreements, representations and warranties are made and given by Grantor and shall extend to and bind its successors and assigns, and shall inure to the benefit of Secured Party, the Trustee, and their respective successors and assigns.

14. This Credit Line Deed of Trust is to be filed of record in the office of the Clerk of the County Commission of Ohio County, West Virginia, so as to serve as a fixture filing pursuant to Section 46-9-502 of the West Virginia Code.

WITNESS the following signature:

OHIO COUNTY DEVELOPMENT AUTHORITY

By _____
Its President

STATE OF WEST VIRGINIA,

COUNTY OF OHIO, to-wit:

The foregoing instrument was acknowledged before me this 28th day of February, 2011, by David J. Sims, the President of the Ohio County Development Authority, a county development authority and public corporation with perpetual existence in Ohio County, West Virginia, on behalf of such county development authority and public corporation.

My commission expires: 6/3/20.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN C. HOFFMAN
401 Warwood Avenue
Wheeling, West Virginia 26003
My Commission Expires June 3, 2020

_____
NOTARY PUBLIC

This instrument was prepared by Samme L. Gee, Esq., Jackson Kelly PLLC, P. O. Box 553, Charleston, WV 25322.

{C1765761.1}

EXHIBIT A

As to 1.25 acre parcel (WesBanco):

All that certain lot or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point at the northerly line of a 90 feet wide right of way for Cabela Drive and the easterly line of a 40 feet wide right of way for an access road, said point being North 55 degrees 7 minutes 2 seconds East, 621 and 59/100 feet from the intersection of the centerline of Cabela Drive with the centerline of Bob Wise Drive; thence along the easterly line of said 40 feet wide right of way for an access road, North 27 degrees 51 minutes 35 seconds West, 160 and 46/100 feet to a point; thence by a curve to the left having an arc length of 39 and 1/100 feet, a radius of 65 and 0/100 feet, with a chord bearing North 45 degrees 03 minutes 04 seconds West, 38 and 42/100 feet to a point; thence leaving the line of said access road and along the line of land of Ohio County Development Authority North 76 degrees 10 minutes 04 seconds East, 137 and 98/100 feet to a point; thence by the same, North 72 degrees 04 minutes 16 seconds East, 246 and 51/100 feet to a point; thence by the same South 27 degrees 51 minutes 35 seconds East, 71 and 74/100 feet to a point; thence by the same South 32 degrees 58 minutes 39 seconds West, 101 and 51/100 feet to a point; thence by the same South 62 degrees 08 minutes 25 seconds West, 108 and 45/100 feet to a point at the northerly line of said 90 feet wide right of way for Cabela Drive; thence along the northerly line of said 90 feet wide right of way for Cabela Drive, South 62 degrees 08 minutes 25 seconds West, 168 and 23/100 feet to the place of beginning.

Containing 1 and 25 hundredth acres, more or less.

Being part of a 471 acre tract of land conveyed to The Ohio County Development Authority by deed dated June 19, 2003, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 743, at Page 328, and also being a part of Parcel Three (768/1000 acre tract) which was conveyed to The Ohio County Development Authority by deed dated October 15, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 746, at page 265, and also being a part of the 9 and 63/100 acre tract described as Tract 1 conveyed to The Ohio County Development Authority by Deed of Correction dated July 2, 2004, and recorded in the aforesaid Clerk's Office in Deed Book No. 752, at Page 570, and also being a part of an 18.82 acre tract described as Parcel 5 conveyed to The Ohio County Development Authority by deed dated April 1, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 758, at Page 371.

As to 0.85 acre parcel (Quiznos, WV Department of Tourism, Coldstone Creamery)

All that certain tract or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point being the northwesterly corner of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book 742, at Page 440; thence, along the West Virginia Department of Highways right of way for CR 41/9 North 13 degrees 6 minutes 16 seconds East, 80 and 41/100 feet to a point; thence, by the same North 44 degrees 32 minutes 16 seconds East, 19 and 42/100 feet to a point; thence, by the same North 86 degrees 18 minutes 25 seconds East, 257 and 86/100 feet to a point; thence continuing leaving said right of way for CR 41/9 South 3 degrees 41 minutes 35 seconds East, 169 and 78/100 feet to a point at the northerly line of said West Virginia Department of Highways right of way for Cabela Drive; thence, along said West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 306 and 19/100 feet to the place of beginning.

Containing 85 hundredth (.85) of an acre, more or less.

Being part of the same real estate conveyed to The Ohio County Development Authority by deed dated December 20, 2000, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 724, at Page 309, and also being part of the same real estate conveyed to the Ohio County Development Authority by deed dated June 19, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 743, at page 328.

As to 1.30 acre parcel (Eat-N-Park):

All that certain tract or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book No. 742, at Page 440, said point being South 78 degrees 34 minutes 28 seconds East 306 and 19/100 feet from the northwesterly corner of said right of way and being the southeast corner of a 98/100 acre parcel known as Parcel A; thence, along the easterly line of Parcel A North 3 degrees 41 minutes 35 seconds West, 169 and 78/100 feet to appoint at the southerly right of way line of CR 41/9; thence, along said southerly right of way line of CR 41/9 North 86 degrees 18 minutes 25 seconds East, 163 and 7/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9, North 85 degrees 5 minutes 7 seconds East, 127 and 99/100 feet to a point; thence continuing along said southerly right of way line of CR 41/9 South 52 degrees 5 minutes 23 seconds East, 17 and 18/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9 North 79 degrees 10 minutes 32 seconds East, 37 and 16/100 feet to a point at the Controlled Access Right of Way Line of Interstate Route 70; thence, along the Controlled Access Right of Way of Interstate Route 70 South 26 degrees 30 minutes 5 seconds West 257 and 72/100 feet to a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive; thence along said northerly line of the West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 218 and 71/100 feet to the place of beginning.

Containing one and 30 hundredth (1.30) acres, more or less.

Being part of the same real estate conveyed to The Ohio County Development Authority by deed dated December 20, 2000, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 724, at Page 309, and also being part of the same real estate conveyed to the Ohio County Development Authority by deed dated June 19, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 743, at Page 328.

As to 2.26 acre parcel (Cracker Barrel):

All that certain lot or parcel of land situate in the District of Triadelphia, County of Ohio, and State of West Virginia, being more particularly bounded and described as follows:

Beginning at a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9, said beginning point being located North 3 degrees 29 minutes 13 seconds East, 606.01 feet from a point at the centerline intersection of Cabela Drive and Interstate Route No. 70, the bearing of the centerline of Cabela Drive being North 76 degrees 55 minutes 50 seconds West at said intersection point; thence, from said beginning point through lands of Ohio County Development Authority, North 27 degrees 40 minutes 20 seconds West, 144.82 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 17 degrees 29 minutes 21 seconds East, 111.03 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 62 degrees 22 minutes 48 seconds East, 377.22 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, South 27 degrees 40 minutes 13 seconds East, 223.03 feet to a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9; thence, along a line 27.00 feet distant from the centerline of County Route 41/9, South 62 degrees 22 minutes 16 seconds West, 343.05 feet to a point marked by an iron pin; thence South 62 degrees 19 minutes 40 seconds West, 112.90 feet to the place of beginning.

Containing 98,626 square feet or 2.26 (two and twenty six hundredth) acres.

Being part of the same parcels of land conveyed to the Ohio County Development Authority by the following: Deed dated September 12, 2003, and recorded in the Office of the County Clerk of Ohio County in Deed Book No. 745, at Page 694; Deed dated February 24, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at Page 437; Deed dated February 24, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at Page 422; and Deed dated February 19, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 757, at page 376.

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, Made this 28th day of February, 2011, effective as of the 28th day of February, 2011, by and between the **OHIO COUNTY DEVELOPMENT AUTHORITY,** a county development authority and public corporation with perpetual existence in Ohio County, West Virginia (the "Assignor"), and the **WEST VIRGINIA WATER DEVELOPMENT AUTHORITY,** a body corporate and governmental instrumentality of the State of West Virginia (the "Assignee").

WITNESSETH:

WHEREAS, the Assignor is issuing its Water Project Bonds, Series 2011 A in an aggregate amount not to exceed $1,600,000 (the "Bonds") which shall be purchased by the Assignee pursuant to a Loan Agreement between the Assignor and the Assignee dated as of even date herewith (the "Loan Agreement") for the Series 2011 A Bonds and is secured by, among other things, that certain Credit Line Deed of Trust, Security Agreement and Fixture Filing dated as of even date herewith (the "Deed of Trust"), on that certain parcel or parcels of land, together with the improvements thereon, located in Ohio County, West Virginia, more particularly described in **SCHEDULE A** attached hereto (the "Property"); and

WHEREAS, the Assignor has entered into a number of leases with respect to the real property located on the Property (the "Leases"); and

WHEREAS, the parties hereto intend to provide further security to the Assignee for repayment by the Assignor of the Bonds.

NOW, THEREFORE, FOR VALUE RECEIVED, and intending to be legally bound hereby, the Assignor does hereby transfer, assign and set over to the Assignee, except as hereinafter limited, all of its rights, title and interest in the Leases, except that the Assignor does not hereby delegate to the Assignee its duties and obligations in and under the Leases. Such assignment shall be a shared assignment of the Leases in conjunction with the Collateral of Leases and Rents to WesBanco Bank, Inc. dated February 26, 2010, on a Last-in/Last-out basis. Such assignment shall be subject to the Intercreditor Agreement entered into between the Assignee and WesBanco Bank, Inc. and recorded contemporaneously herewith (the "Intercreditor Agreement").

This Assignment shall be subject to the following terms and conditions:

1. The Assignee agrees that so long as there is not a default under the Bonds, the Loan Agreement, the Deed of Trust or any other instruments evidencing or securing the Bonds secured hereby or thereby (together, the "Loan Documents"), the Assignor may collect all rents due and exercise all rights under the Leases. If the Assignor is in default under the Deed of Trust, under the Loan Documents, or the Bonds, and the default continues after any notice to Assignor and the expiration of any applicable grace or cure period or either thereof as provided under the Deed of Trust or any of the Loan Documents, then the Assignee may collect all payments directly from the tenants under the Leases and

exercise all rights thereunder subject to the Intercreditor Agreement so long as it remains in effect.

2. The Assignor reserves the right to enforce all provisions of the Leases; provided, however, that such right is also assigned to the Assignee and may be exercised by the Assignor before default, but only by the Assignee after the occurrence of any event of default under any of the Loan Documents.

3. Nothing contained in this Assignment shall prejudice the right of the Assignee to commence and prosecute, or to prevent the Assignee from commencing and prosecuting, any action which it may deem advisable, or which it may be entitled to commence and prosecute for the foreclosure on the Bonds or the Deed of Trust, or to prejudice any other rights of the Assignee.

4. This Agreement shall inure to the benefit of the Assignee, its successors, assignees, endorsees, and any person or persons, including any banking institution or lending institution to whom the Assignee may grant any interest in the instruments evidencing the Bonds secured hereby.

5. When the Bonds are paid in full and the Deed of Trust is satisfied of record, this Assignment shall be of no further force and effect and shall be canceled.

6. The Assignee shall not be obligated to perform or discharge any obligation under the Leases by reason of this Assignment.

7. This Assignment shall bind the Assignor and its respective successors and assigns.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be executed as of the date first above written.

OHIO COUNTY DEVELOPMENT AUTHORITY

By _____
Its President

STATE OF WEST VIRGINIA,

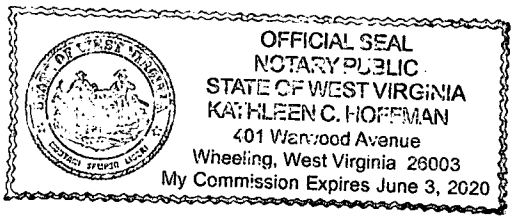
COUNTY OF OHIO, to-wit:

The foregoing instrument was acknowledged before me this 28th day of February, 2011 by David J. Sims, the President of the Ohio County Development Authority, a county development authority and public corporation, on behalf of said corporation.

My commission expires: 6/3/20.

Kathleen C. Hoffman
Notary Public

[Stamp]



This instrument was prepared by: Samme L. Gee, Esq., Jackson Kelly PLLC, P.O. Box 553, Charleston, WV 25322.

SCHEDULE A
DESCRIPTION OF PROPERTY

As to 1.25 acre parcel (WesBanco):

All that certain lot or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point at the northerly line of a 90 feet wide right of way for Cabela Drive and the easterly line of a 40 feet wide right of way for an access road, said point being North 55 degrees 7 minutes 2 seconds East, 621 and 59/100 feet from the intersection of the centerline of Cabela Drive with the centerline of Bob Wise Drive; thence along the easterly line of said 40 feet wide right of way for an access road, North 27 degrees 51 minutes 35 seconds West, 160 and 46/100 feet to a point; thence by a curve to the left having an arc length of 39 and 1/100 feet, a radius of 65 and 0/100 feet, with a chord bearing North 45 degrees 03 minutes 04 seconds West, 38 and 42/100 feet to a point; thence leaving the line of said access road and along the line of land of Ohio County Development Authority North 76 degrees 10 minutes 04 seconds East, 137 and 98/100 feet to a point; thence by the same, North 72 degrees 04 minutes 16 seconds East, 246 and 51/100 feet to a point; thence by the same South 27 degrees 51 minutes 35 seconds East, 71 and 74/100 feet to a point; thence by the same South 32 degrees 58 minutes 39 seconds West, 101 and 51/100 feet to a point; thence by the same South 62 degrees 08 minutes 25 seconds West, 108 and 45/100 feet to a point at the northerly line of said 90 feet wide right of way for Cabela Drive; thence along the northerly line of said 90 feet wide right of way for Cabela Drive, South 62 degrees 08 minutes 25 seconds West, 168 and 23/100 feet to the place of beginning.

Containing 1 and 25 hundredth acres, more or less.

Being part of a 471 acre tract of land conveyed to The Ohio County Development Authority by deed dated June 19, 2003, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 743, at Page 328, and also being a part of Parcel Three (768/1000 acre tract) which was conveyed to The Ohio County Development Authority by deed dated October 15, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 746, at page 265, and also being a part of the 9 and 63/100 acre tract described as Tract 1 conveyed to The Ohio County Development Authority by Deed of Correction dated July 2, 2004, and recorded in the aforesaid Clerk's Office in Deed Book No. 752, at Page 570, and also being a part of an 18.82 acre tract described as Parcel 5 conveyed to The Ohio County Development Authority by deed dated April 1, 2005, and recorded in the aforesaid Clerk's Office in Deed Book No. 758, at Page 371.

As to 0.85 acre parcel (Quiznos, WV Department of Tourism, Coldstone Creamery)

All that certain tract or parcel of real estate, situate in The Highlands Development, Triadelphia District, Ohio County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point being the northwesterly corner of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book 742, at Page 440; thence, along the West Virginia Department of Highways right of way for CR 41/9 North 13 degrees 6 minutes 16 seconds East, 80 and 41/100 feet to a point; thence, by the same North 44 degrees 32 minutes 16 seconds East, 19 and 42/100 feet to a point; thence, by the same North 86 degrees 18 minutes 25 seconds East, 257 and 86/100 feet to a point; thence continuing leaving said right of way for CR 41/9 South 3 degrees 41 minutes 35 seconds East, 169 and 78/100 feet to a point at the northerly line of said West Virginia Department of Highways right of way for Cabela Drive; thence, along said West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 306 and 19/100 feet to the place of beginning.

Containing 85 hundredth (.85) of an acre, more or less.

Being part of the same real estate conveyed to The Ohio County Development Authority by deed dated December 20, 2000, and recorded in the Office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book No. 724, at Page 309, and also being part of the same real estate conveyed to the Ohio County Development Authority by deed dated June 19, 2003, and recorded in the aforesaid Clerk's Office in Deed Book No. 743, at page 328.

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Beginning at a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive, which right of way is of record in the Office of the Clerk of the County Commission of Ohio County in Deed Book No. 742, at Page 440, said point being South 78 degrees 34 minutes 28 seconds East 306 and 19/100 feet from the northwesterly corner of said right of way and being the southeast corner of a 98/100 acre parcel known as Parcel A; thence, along the easterly line of Parcel A North 3 degrees 41 minutes 35 seconds West, 169 and 78/100 feet to appoint at the southerly right of way line of CR 41/9; thence, along said southerly right of way line of CR 41/9 North 86 degrees 18 minutes 25 seconds East, 163 and 7/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9, North 85 degrees 5 minutes 7 seconds East, 127 and 99/100 feet to a point; thence continuing along said southerly right of way line of CR 41/9 South 52 degrees 5 minutes 23 seconds East, 17 and 18/100 feet to a point; thence, continuing along said southerly right of way line of CR 41/9 North 79 degrees 10 minutes 32 seconds East, 37 and 16/100 feet to a point at the Controlled Access Right of Way Line of Interstate Route 70; thence, along the Controlled Access Right of Way of Interstate Route 70 South 26 degrees 30 minutes 5 seconds West 257 and 72/100 feet to a point at the northerly line of the West Virginia Department of Highways right of way for Cabela Drive; thence along said northerly line of the West Virginia Department of Highways right of way for Cabela Drive North 78 degrees 34 minutes 28 seconds West, 218 and 71/100 feet to the place of beginning.

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As to 2.26 acre parcel (Cracker Barrel):

All that certain lot or parcel of land situate in the District of Triadelphia, County of Ohio, and State of West Virginia, being more particularly bounded and described as follows:

Beginning at a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9, said beginning point being located North 3 degrees 29 minutes 13 seconds East, 606.01 feet from a point at the centerline intersection of Cabela Drive and Interstate Route No. 70, the bearing of the centerline of Cabela Drive being North 76 degrees 55 minutes 50 seconds West at said intersection point; thence, from said beginning point through lands of Ohio County Development Authority, North 27 degrees 40 minutes 20 seconds West, 144.82 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 17 degrees 29 minutes 21 seconds East, 111.03 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, North 62 degrees 22 minutes 48 seconds East, 377.22 feet to a point marked by an iron pin; thence, continuing through lands of Ohio County Development Authority, South 27 degrees 40 minutes 13 seconds East, 223.03 feet to a point marked by an iron pin 27.00 feet distant from the centerline of County Route 41/9; thence, along a line 27.00 feet distant from the centerline of County Route 41/9, South 62 degrees 22 minutes 16 seconds West, 343.05 feet to a point marked by an iron pin; thence South 62 degrees 19 minutes 40 seconds West, 112.90 feet to the place of beginning.

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OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. LOAN AGREEMENTS
12. SPECIMEN BOND
13. BOND PROCEEDS
14. CONFLICTS OF INTEREST
15. VERIFICATION OF SCHEDULE
16. GRANTS
17. PROCUREMENT OF ENGINEERING SERVICES
18. COUNTERPARTS

On this 28th day of February, 2011, we, the undersigned PRESIDENT and the undersigned SECRETARY-TREASURER of the Board of the Ohio County Development Authority (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated the date hereof (the "Series 2011 A 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 set forth in the Bond Ordinance duly enacted by the Issuer on April 20, 2010, the Supplemental and Amendatory Resolution duly adopted by the Issuer on February 23, 2011 (collectively, the "Ordinance"), and the loan agreement for the Series 2011 A Bonds by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated February 28, 2011 (the "Loan Agreement").

2. NO LITIGATION: Except as noted below, no controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened,

restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the Series 2011 Facilities, the collection or use of the revenues derived from the Leases (as defined in the Supplemental and Amendatory Resolution), the assignment of the Leases, the entering into of the Deed of Trust, or the pledge and security of the Surplus Revenues (as defined in the Supplemental Resolution and Amendatory Resolution) for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Board thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation or the Series 2011 Facilities, the collection or use of the revenues derived from the Leases, or the pledge and security of the revenues derived from the Leases for the Bonds. The following civil actions may affect the priority of liens on the pledged property if a judgment is rendered during present term of court, which ends May 8, 2011:

a) *Savage Construction Co. v. Ohio County Development Authority*, Civil Action No. 10-C-405 (REW) (Ohio County Circuit Court, West Virginia), in which the plaintiff seeks to have an March 12, 2010 arbitrator's award for $260,099.94 entered as a judgment against the Issuer. Issuer and plaintiff are actively negotiating an agreement on payment and satisfaction of the award without entry of judgment. Counsel for the Issuer anticipates that a definite, written agreement will be reached by March 1, 2011. Issuer has advised that the award amount is subject to possible offset from a cross-claim against plaintiff in excess of $900,000 asserted in the civil action referenced below.

b) *Kelly Paving, Inc. v. Savage Construction Company and Ohio County Development Authority*, Civil Action No. 10-C-444 (REW) (Ohio County Circuit Court, West Virginia), in which Kelly Paving, Inc. presented breach of contract claims against Savage Construction Company and an unjust enrichment claim against the Issuer related to the preceding civil action. No scheduling order has been entered or trial date, set. Disposition of this action during the present term of court is not reasonably likely.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the Series 2011 Facilities by Ohio County Public Service District. Competitive bids for the acquisition and construction of the Project have been solicited by the Issuer in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the receipt of the binding letter of commitment from the Council. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Issuer has granted a first lien on the revenues derived from the Leases and entered into an Assignment of Rents and Leases that is shared with WesBanco Bank, Inc. on a Last-in/Last-out basis, subject to the Intercreditor Agreement.

The Issuer has entered into the Deed of Trust which grants a shared first lien on the real property and fixtures on the designated properties of the Authority on which lien is shared and on a pro rata basis with the lien of WesBanco Bank, Inc.

Other than the Prior Obligations, there are no outstanding bonds or obligations of the Issuer which are secured by revenues of the Leases and the lien on the property subject to the Leases.

There are no outstanding bonds or obligations of the Issuer which are secured by the revenues not needed for payment of debt service of the Issuer. The Issuer has granted a lien on the Surplus Revenues of the Issuer.

5. SIGNATURES AND DELIVERY: The undersigned President and Secretary-Treasurer are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned President did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned Secretary-Treasurer did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; 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.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Public Service Commission of West Virginia (the "PSC") Order dated August 16, 2004, in Case No. 04-0902-PSWD-PC, approving the Alternate Mainline Extension Agreement between the Issuer and Ohio County Public Service District which allows the Issuer to construct the Project. The time for appeal of the PSC Order has

expired prior to the date hereof without any appeal having been filed. The Order remains in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Ohio County Development Authority." The Issuer is a development authority and public agency duly created by the Ohio County Commission and existing under the laws of, and a public corporation with perpetual existence in the State of West Virginia in Ohio County of said State. The Series 2011 Facilities will be located in Ohio County of said State. The governing body of the Issuer is its Board, consisting of 13 duly appointed, qualified and acting members, whose names and dates of commencement and termination of their current terms are as follows:

Name	Date of Commencement of Office	Date of Termination of Office
David J. Sims	July 17, 2008	July 20, 2011
Gregory L. Stewart	July 28, 2010	July 20, 2013
John Lucas	July 28, 2010	July 20, 2013
Tom Cerra	July 28, 2010	July 20, 2013
Terry Sterling	July 28, 2010	July 20, 2013
Nancy Weeks	July 28, 2010	July 20, 2013
Orphy Klempa	July 17, 2008	July 20, 2011
Randy Russell	July 17, 2008	July 20, 2011
Paul Walters	July 17, 2008	July 20, 2011
Tim McCormick	July 20, 2009	July 20, 2012
Raymond Helbling	July 17, 2009	July 20, 2012
Randy Wharton	July 17, 2009	July 20, 2012
Andy McKenzie	July 1, 2009	July 20, 2013

The duly elected or appointed officers of the Board for 2011 are as follows:

David J. Sims	-	President
Nancy Weeks	-	Vice President
Gregory L. Stewart	-	Secretary-Treasurer

The attorney for the Issuer is Bailey Riley Butch & Harman L.C., of Wheeling, West Virginia.

8. LAND AND RIGHTS-OF-WAY: All land, rights-of-way and easements necessary for the acquisition and construction of the Project the transfer of the

Series 2011 Facilities to Ohio County Public Service District 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 that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

9. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, transfer of the Series 2011 Facilities to Ohio County Public Service District and financing of the Project or the Series 2011 Facilities were authorized or adopted at meetings of the Board duly and regularly or specifically called and held pursuant to all applicable statutes and the rules of procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

10. INSURANCE: The Issuer will maintain or will use its best efforts to cause the Ohio County PSD to maintain and will require all contractors to maintain worker's compensation, public liability insurance, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan Agreements. To the best knowledge of the Issuer, all insurance for the Series 2011 Facilities required by the Ordinance and the Loan Agreement to be obtained by Ohio County Public Service District and the City of Wheeling are in full force and effect.

11. LOAN AGREEMENTS: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreements are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement do not contain any untrue statements of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

12. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Bond which, except as to execution and authentication, is identical in all respects with

the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

13. BOND PROCEEDS: On the date hereof, the Issuer received the sum of $321,059.96 from the Authority and the Council, being a portion of the principal amount of the Series 2011 A Bonds. The balance of the principal amount of the Series 2011 Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

14. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Bonds, the Ordinance and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

15. VERIFICATION OF SCHEDULE: The final amended Schedule B attached to the Certificate of Consulting Engineer, with the signature of the President and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

16. GRANTS: As of the date hereof, the United States Economic Development Administration grant in the amount of $6,400,000 is committed for the Project and is in full force and effect.

17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of Ohio County Development Authority as of the date first written above.

[SEAL]

Signature	Official Title
_____	President
_____	Secretary-Treasurer
_____	Attorney

{C1941576.1}

EXHIBIT A

See Specimen Bond (Tab No. 14).

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.2

CERTIFICATE AS TO USE OF PROCEEDS

On this 28th day of February, 2011, the undersigned President of the Board of Ohio County Development Authority in Ohio County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of $1,600,000 Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, dated February 28, 2011 (the "Series 2011 A Bonds" or the "Bonds"), hereby certify as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am 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 same meanings set forth in the Bond Ordinance duly adopted by the Issuer on April 20, 2010, as supplemented and amended on February 23, 2011 (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 February 28, 2011, the date on which the Bonds are being physically delivered in exchange for a portion of the principal amount of the 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") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, 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 2011 A Bonds were sold on February 28, 2011, to the Authority, pursuant to a loan agreement dated February 28, 2011, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of $1,600,000 (100% of par), at which time, the Issuer received the sum of $321,059.96 from the Authority and the Council, being the first advance of the principal amount of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The 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 waterworks facilities located in Ohio County (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment, or has already done so. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Series 2011 A Bonds Reserve Account, 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 September 1, 2012. The acquisition and construction of the Project is expected to be completed by March 1, 2012.

8. The total cost of the Project is estimated at $8,000,000. Sources and uses of funds for the Project are as follows:

SOURCES

Series 2011 A Bonds Proceeds	$	1,600,000.00
USEDA Grant	$	6,400,000.00
Total Sources	$	8,000,000.00

USES

Costs of Project	$	7,969,500.00
Costs of Issuance	$	30,500.00
Total Uses	$	8,000,000.00

9. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created or continued:

(1) Revenue Fund;

(2) Series 2011 Bonds Construction Trust Fund;

(3) Series 2011 A Bonds Sinking Fund; and

(4) Series 2011 A Bonds Reserve Account.

10. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Series 2011 A Bond proceeds in the amount of $-0- will be deposited in the Series 2011 A Bonds Reserve Account.

(2) The balance of the proceeds of the Bonds will be deposited in the Series 2011 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

Prior to expenditure, the proceeds of the Bonds in the Series 2011 A Bonds Construction Trust Fund will be invested at a yield not to exceed the yield on the Council's bonds, the proceeds of which were used to make the loan to the Issuer.

11. Moneys held in the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the respective Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2011 A Bonds Reserve Account (if fully funded with proceeds of the Series 2011 A Bonds) will be withdrawn therefrom and deposited into the Series 2011 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited 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 24 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 2011 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 24 months from the date of issuance thereof.

15. After completion of the Project, the Issuer shall transfer the Project to Ohio County Public Service District.

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 the proceeds of 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 2011 A Bonds Reserve Account at the maximum amount of principal and interest, if any, 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 2011 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2011 A Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the

then current or any succeeding year. Moneys in the Series 2011 A Bonds Reserve Account and the Series 2011 A 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. 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.

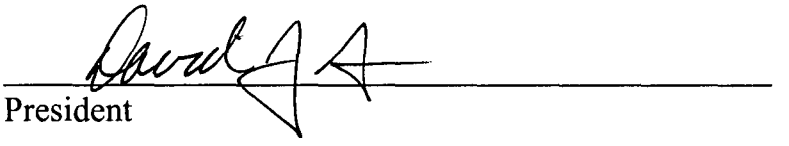
25. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

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. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of the date first written above.

OHIO COUNTY DEVELOPMENT AUTHORITY



President

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.3

CERTIFICATE OF SECRETARY-TREASURER
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

On this 28th day of February, 2011, the undersigned duly appointed Secretary-Treasurer of Ohio County Development Authority (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted or approved by the Board (the "Board") of the Issuer and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Orders of The County Commission of Ohio County Creating the Issuer.

2. Orders of The County Commission of Ohio County Appointing the Members of the Board.

3. Oaths of Office of the Board Members.

4. Bylaws of the Issuer.

5. Public Service Commission Order.

6. Infrastructure Council Approval Letter.

7. Infrastructure Council Loan Agreement.

8. Bond Ordinance.

9. Supplemental and Amendatory Resolution.

10. Minutes of Board Meeting regarding Adoption of Bond Ordinance and Supplemental Resolution.

11. Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Ordinance and Supplemental Resolution.

12. Environmental Health Services Permit.

13. Evidence of Insurance.

14. Evidence of USEDA Grant.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

OHIO COUNTY DEVELOPMENT AUTHORITY

[SEAL]

Secretary-Treasurer

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.4

CERTIFICATE OF CONSULTING ENGINEER

On this 28th day of February, 2011, I, Morgan K. Coast, Registered Professional Engineer, West Virginia License No. 8261, of Vaughn Coast & Vaughn, Inc., Wheeling, West Virginia, hereby certify as follows:

1. Vaughn Coast & Vaughn, Inc., is engineer for the acquisition and construction of waterworks facilities located in Ohio County, West Virginia consisting of the Project as defined in the Bond Ordinance (hereinafter defined) (the "Project") to be constructed in Ohio County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance adopted by the Issuer on April 20, 2010 (the "Bond Ordinance"), the Series 2011 A Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated February 28, 2011 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying certain costs of issuance and related costs.

3. To the best of 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 Vaughn Coast & Vaughn, Inc., and any change orders approved by the Issuer, the Council, the Authority and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and when constructed, in our professional opinion, has an anticipated useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A; (iv) the successful bidders have provided the Drug-Free Workplace Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of

the West Virginia Code; (v) the successful bidders acknowledged receipt of all addenda to the original bid documents; (vi) the bid documents relating to the Project reflect the Project as approved by the West Virginia Bureau for Public Health and the bid forms provided to the bidders contain the critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) 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; (x) the Ohio County PSD and the City of Wheeling have obtained all permits required by the laws of the State of West Virginia and the United States necessary for the operation of their respective portions of the Series 2011 Facilities; and (xi) the net proceeds of the Bonds, together with all moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Council.

4. The Project which will be transferred to the Ohio County Public Service District and the City of Wheeling will serve no additional customers.

WITNESS my signature and seal as of the date first written above.

[SEAL]

VAUGHN COAST & VAUGHN, INC.
Morgan K. Coast, P.E.
West Virginia License No. 8261

Morgan K. Coast 2/28/11

SCHEDULE B - OHIO COUNTY WATER PROJECT				2/2/2011
Project:	OHIO COUNTY WATER SUPPLY (IJDC #2009W-1119) (EDA #01-79-73009)			
		TOTAL	EDA GRANT	IJDC LOAN
A. COST OF PROJECT				
1	Construction			
	Contract 1: Tank	1,856,000.00	1,484,800.00	371,200.00
	Contract 2: Pump Station	814,030.00	651,224.00	162,806.00
	Contract 3: Water Mains	2,827,953.00	2,262,362.00	565,591.00
	Total	5,497,983.00	4,398,386.00	1,099,597.00
2	Technical Services			
	Design	313,000.00	250,400.00	62,600.00
	Planning	0.00		
	Inspection Services	188,000.00	150,400.00	37,600.00
	Special Services	30,000.00	24,000.00	6,000.00
3	Legal & Fiscal			
	Legal	30,000.00	24,000.00	6,000.00
	Interest During Construction	0.00		
	Accountant	0.00		
	Loan Repayment	0.00		
	PSC Attorney	7,500.00	6,000.00	1,500.00
4	Administrative & General			
	Administrative	100,000.00	80,000.00	20,000.00
	Soils & Concrete Testing	0.00		
	Electric Service	0.00		
	Permits & Fees	10,000.00	8,000.00	2,000.00
5	Sites & Other Lands	330,000.00	264,000.00	66,000.00
6	Construction Contingency	275,000.00	220,000.00	55,000.00
7	Project Contingency	1,188,017.00	950,414.00	237,603.00
8	Total	7,969,500.00	6,375,600.00	1,593,900.00
B. COST OF FINANCING				
9	Funded Reserve	0.00		
10	Registrar Fees	500.00	400.00	100.00
11	Bond Counsel	30,000.00	24,000.00	6,000.00
12	Capitalized Interest	0.00		
13	Printing/Registrar	0.00		
14	Cost of Financing	30,500.00	24,400.00	6,100.00
15	TOTAL Cost of Project	8,000,000.00	6,400,000.00	1,600,000.00
C. SOURCE OF FUNDS				
16	Federal Grants	6,400,000.00	6,400,000.00	
17	State Grants:	0.00		
18	Other Grants:	0.00		
19	Any Other Source	0.00		
20	TOTAL	6,400,000.00	6,400,000.00	
21	Net Proceeds from Bond Issuance	1,600,000.00	0.00	1,600,000.00

EDA Grant	6,400,000.00
IJDC Loan	1,600,000.00
Total	8,000,000.00

Gregory L. Stewart, OCDA Secretary/Treasurer

Morgan Coast, P.E., Vaughn, Coast and Vaughn

BODKIN WILSON & KOZICKI PLLC

CERTIFIED PUBLIC ACCOUNTANTS

John S. Bodkin, Jr., CPA
Dan E Wilson, CPA, MBA
Dennis A. Kozicki, CPA
Nancy J. Gwynn, CPA

Michael N. Deemer, CPA
Brendan T. Welsh, CPA, MSA
Doreen M. DeMeter, CPA

The Maxwell Centre
32 Twentieth Street, Suite 300
Wheeling, West Virginia 26003

304 232-2280
Fax 304 232-2322
www.bwkcpas.com

Weirton Office
204 Three Springs Drive, Suite C
Weirton, West Virginia 26062

304 748-5550
Fax 304 748-5551

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

Ohio County Development Authority
Wheeling, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Jackson Kelly PLLC
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the lease payments scheduled to be made to the Ohio County Development Authority (the "Issuer") pursuant to the Leases (as defined in the Supplemental and Amendatory Resolution of the Issuer adopted February 23, 2011) and assuming that (i) the terms of the Leases extend for the life of the Series 2011 A Bonds (as defined below), (ii) the interest rate on the Prior Obligations (as defined in the aforesaid Supplemental and Amendatory Resolution) remains the same rate as on the date hereof for the term of the Prior Obligations, (iii) the reserve account payments for the Prior Obligations are funded from sale proceeds and other available funds not constituting payments under the Leases, and (iv) all payments required under the Leases are made, it is our opinion that such payments will be sufficient to provide revenues which will be sufficient to pay 120% of the maximum amount required in any year for debt service and all reserve account payments, if any, on the Water Project Bonds, Series 2011 A (West Infrastructure Fund) (the "Series 2011 A bonds"), to be issued to the West Virginia Water Development Authority on the date hereof, and the Prior Obligations.

Bodkin Wilson & Kozicki PLLC

Wheeling, West Virginia,
February 28, 2011.

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.6

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On this 28th day of February, 2011, in Charleston, West Virginia, the Authority received the Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), of Ohio County Development Authority (the "Issuer"), in the principal amount of $1,600,000, numbered AR-1, issued in the form of one bond, fully registered to the Authority, and dated February 28, 2011 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the President of the Issuer and attested by the Secretary-Treasurer of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 28th day of February, 2011.

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

Carol A. Cummings
Authorized Representative

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.7

RECEIPT FOR BOND PROCEEDS

The undersigned President of Ohio County Development Authority (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On this 28th day of February, 2011, the Issuer received from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the $1,600,000 Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund) (the "Series 2011 A Bonds"), the sum of $321,059.96, being a portion of the principal amount of the Series 2011 A Bonds, dated February 28, 2011. The Issuer understands that the remaining proceeds of the Series 2011 A Bonds will be advanced to the Issuer by the Authority and the West Virginia Infrastructure and Jobs Development Council from time to time as construction proceeds to completion.

WITNESS my signature on this 28th day of February, 2011.

OHIO COUNTY DEVELOPMENT AUTHORITY

President

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.8

REQUEST AND AUTHORIZATION TO
AUTHENTICATE, REGISTER AND DELIVER BONDS

United Bank, Inc.
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $1,600,000 Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), in the form of one bond, numbered AR-1, dated February 28, 2011 (the "Bonds"), of Ohio County Development Authority (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance and a Supplemental and Amendatory Resolution duly adopted by the Issuer on February 23, 2011.

You are hereby requested and authorized to authenticate, register and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

WITNESS my signature on this 28th day of February, 2011.

OHIO COUNTY DEVELOPMENT
AUTHORITY

President

(SEAL)

Attest:

Secretary-Treasurer

{C1941625.1}

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 28th day of February, 2011, by and between OHIO COUNTY DEVELOPMENT AUTHORITY, a public corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $1,600,000 Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated February 28, 2011 (the "Bonds"), in the form of one bond, in fully registered form, pursuant to a Bond Ordinance enacted on April 20, 2010, and a Supplemental and Amendatory Resolution adopted by the Issuer on February 23, 2011 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so 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 heretofore agreed by the parties and set forth in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The 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 Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:
Ohio County Development Authority
1500 Chapline Street
215 City County Building
Wheeling, WV 26003
Attention: President

REGISTRAR:
United Bank, Inc.
500 Virginia Street East
Charleston, WV 25301
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

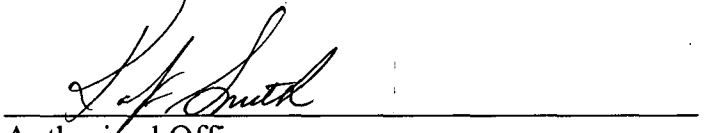
8. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Ordinance.

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 date first written above.

OHIO COUNTY DEVELOPMENT AUTHORITY

President

UNITED BANK, INC.



Authorized Officer

EXHIBIT A

See Bond Ordinance (Tab No. 9)

See Supplemental and Amendatory Resolution (Tab No. 10)

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.10

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), of Ohio County Development Authority (the "Issuer"), dated February 28, 2011, in the principal amount of $1,600,000, numbered AR-1, was 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 Registrar.

WITNESS my signature on this 28th day of February, 2011.

UNITED BANK, INC., as Registrar

Authorized Officer

OHIO COUNTY DEVELOPMENT AUTHORITY
WATER PROJECT BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

PROGRESSIVE BANK, Wheeling, West Virginia, hereby accepts appointment as Depository Bank for the Series 2011 A Bonds Construction Trust Fund (the "Fund") in connection with a Bond Ordinance enacted by the Ohio County Development Authority (the "Issuer") on April 20, 2010, and a Supplemental and Amendatory Resolution adopted by the Issuer on February 23, 2011 (collectively, the "Ordinance"), authorizing the issuance of the Issuer's Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), in the aggregate principal amount of $1,600,000, dated February 28, 2011, and agrees to serve as Depository Bank for the Fund, all as set forth in the Ordinance.

WITNESS my signature on this 28th day of February, 2011.

PROGRESSIVE BANK

SVP/COO

Authorized Officer

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 401
1207 Quarrier Street, Charleston, WV 25301
(304) 558-3971

3.12

NEW ISSUE REPORT FORM
Date of Report: February 28, 2011

ISSUE: Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund)
ADDRESS: 1500 Chapline Street, 215 City County Building, Wheeling, WV 26003 COUNTY: Ohio

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

ISSUE DATE: February 28, 2011 CLOSING DATE: February 28, 2011
ISSUE AMOUNT: $1,600,000 RATE: 3%
1st DEBT SERVICE DUE: March 1, 2013 PRINCIPAL DUE: March 1, 2013
1st DEBT SERVICE AMOUNT: $26,669.00 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: Kauffelt & Kauffelt
Contact Person: Samme L. Gee, Esquire Contact Person: Mark E. Kauffelt, Esquire
Phone: (304) 340-1318 Phone: (304) 345-1272

CLOSING BANK: Progressive Bank ESCROW TRUSTEE: _____
Contact Person: _____
Contact Person: Diane Kosky Phone: _____
Phone: (304) 233-0060

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WV Infrastructure & Jobs Development Council
Contact Person: Greg Stewart Contact Person: Jim Ellars
Position: County Administrator Function: Executive Director
Phone: (304) 234-3628 Phone: (304) 558-4607
E-Mail: OHCOUNTYSTEWART@aol.com

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

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

NOTES: The Series 2011 A Bond Reserve Account shall be funded over 10 years.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

PWSID: WV3303508

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304) 558-2981

RECEIVED
MAR 01 2010
VAUGHN COAST &

PERMIT

PERMIT NO: 18,504

(Water)
PROJECT: 1.0 MG Elevated Water Storage Tank

LOCATION: "The Highlands" **COUNTY:** Ohio **DATE:** 2-23-2010

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

Ohio County Public Service District
411 National Road
Triadelphia, West Virginia 26059

is hereby granted approval to: install approximately 300 LF of 16" water line; one (1) 1,000,000 gallon elevated water storage tank; and all necessary valves, controls, and appurtenances.

Facilities are to serve **"The Highlands"**. This is the first phase of a project that will also include a 1400 GPM water booster station and 16" water mains from Wheeling to **"The Highlands"**.

NOTE: This permit is contingent upon: 1) All new water lines and tank being disinfected, flushed, and bacteriologically tested prior to use; and 2) Enclosing the tank with a minimum six (6) feet high fence with a locking gate.

The Environmental Engineering Division of the **OEHS-Wheeling District Office**, (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:bms

pc: Vaughn, Coast & Vaughn, Inc.
Amy Swann, PSC
James W. Ellars, P.E., PSC-Eng. Div.
Ohio County Health Department
OEHS-EED Wheeling District Office

PWSID: WV3303508

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304) 558-2981

RECEIVED
MAY 21 2010
VAUGHN, COAST & VAUGHN, INC.

PERMIT

(Water)
PROJECT: 1400 GPM Elm Grove Booster Station **PERMIT NO.: 18,568**

LOCATION: "The Highlands" **COUNTY:** Ohio **DATE:** 5-14-2010

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

Ohio County Public Service District
411 National Road
Triadelphia, West Virginia 26059

is hereby granted approval to: install approximately 11,320 LF of 16", 20 LF of 12", 85 LF of 8" and 30 LF of 6" water line; one (1) 1400 GPM duplex (expandable to a triplex) booster station with booster chlorination; and all necessary valves, controls and appurtenances.

Facilities are to serve "The Highlands". This is part of the second phase of a project that will continue from 1.0 MG Storage tank previously permitted (Permit No. 18,504), and will also include 16" water mains from Wheeling to "The Highlands".

NOTE: This permit is contingent upon all new water lines being disinfected, flushed and bacteriologically tested, prior to use.

The Environmental Engineering Division of the **OEHS-Wheeling District Office, (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:plk
pc: Vaughn, Coast & Vaughn, Inc
Amy Swann, PSC
James W. Ellars, P.E., PSC-Engineering Division
Ron Horton, P.E.
Ohio County Health Department
OEHS-EED Wheeling District Office

PWSID: WV3303516

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304) 558-2981

RECEIVED
MAY 21 2010
VAUGHN, COAST & VAUGHN, INC.

PERMIT

(Water)
PROJECT: 16" Transmission Mains **PERMIT NO.:** 18,507

LOCATION: "The Highlands" **COUNTY:** Ohio **DATE:** 5-14-2010

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

City of Wheeling – Water Department
1500 Chapline Street
Wheeling, West Virginia 26003

is hereby granted approval to: install approximately 12,150 LF of 16" water line and all necessary valves and appurtenances.

Facilities are to serve "The Highlands". This is part of the second phase of a project that will continue from 1.0 MG Storage tank previously permitted (Permit No. 18,504, and will also include a new 1400 GPM duplex booster station at Elm Grove.

NOTE: This permit is contingent upon all new water lines being disinfected, flushed and bacteriologically tested, prior to use.

The Environmental Engineering Division of the **OEHS-Wheeling District Office, (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:plk
pc: Vaughn, Coast & Vaughn, Inc
Amy Swann, PSC
James W. Ellars, P.E., PSC-Engineering Division
Ron Horton, P.E.
Ohio County Health Department
OEHS-EED Wheeling District Office

ACORD CERTIFICATE OF LIABILITY INSURANCE

INSURED COPY

DATE (MM/DD/YY) 02/25/11

PRODUCER Serial # A3147

WV BOARD OF RISK & INSURANCE MGT.
90 MACCORKLE AVE. SW, SUITE 203
SOUTH CHARLESTON, WV 25303

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.

INSURERS AFFORDING COVERAGE

INSURED

OHIO COUNTY COMMISSION
OHIO COUNTY DEVELOPMENT AUTHORITY
1500 CHAPLINE STREET, WHEELING, WV 26003

INSURER A NATIONAL UNION FIRE CO OF PITTSBURGH, PA
INSURER B
INSURER C:
INSURER D:
INSURER E:

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR X WRONGFUL ACT X PROFESSIONAL GEN'L AGGREGATE LIMIT APPLIES PER POLICY PRO-JECT LOC	L900000335	07/01/2010	07/01/2011	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	1,000,000 100,000 0 INCLUDED N/A N/A
A	AUTOMOBILE LIABILITY ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	L900000335	07/01/2010	07/01/2011	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	1,000,000
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $	
	EXCESS LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $ $ $ $	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP	L900000335	07/01/2010	07/01/2011	WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	
B	OTHER						

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN "ADDITIONAL INSURED" WITH RESPECTS TO:

CONSTRUCTION WATER TANK PROJECT

CERTIFICATE HOLDER ADDITIONAL INSURED; INSURER LETTER:

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
180 ASSOCIATION DRIVE
CHARLESTON, WV 25311-1571

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Jerry W. Gladwell

© ACORD CORPORATION 1988

JACKSONKELLY
ATTORNEYS AT LAW PLLC

500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

CLOSING MEMORANDUM

3.15

To: **Carol Cummings**
Jim Ellars
Sara Boardman
Greg Stewart

From: **Samme Gee**

Date: **February 28, 2011**

Re: **Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund)**

DISBURSEMENTS TO DISTRICT

Payor:	West Virginia Infrastructure Fund
Source:	Series 2011 A Bonds Proceeds
Amount:	$321,059.96
Date:	February 28, 2011
Form:	Wire Transfer
Payee:	Ohio County Development Authority
Bank:	Progressive Bank 875 National Road, Wheeling, WV 26003
Contact:	Diane Kosky, (304) 233-0060
Routing No.:	043403224
Account No.:	1514864
Account:	Series 2011 A Bonds Construction Trust Fund

{C1989719.1}

JACKSONKELLY
ATTORNEYS AT LAW PLLC

500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

4.1

February 28, 2011

Ohio County Development Authority
Wheeling, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Re: Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have served as bond counsel to Ohio County Development Authority (the "Issuer") in connection with the issuance of its Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds, dated February 28, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of $1,600,000, in the form of one bond, registered as principal and interest to the Authority, bearing interest at 3%, with principal and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2013, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds.

Clarksburg, WV • Martinsburg, WV • Morgantown, WV • Wheeling, WV
Denver, CO • Lexington, KY • Pittsburgh, PA • Washington, DC

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 7, Article 12, Chapter 8, Article 16 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain waterworks facilities located in Ohio County (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly adopted by the Issuer on April 20, 2010, as supplemented and amended by a Supplemental and Amendatory Resolution duly adopted by the Issuer on February 23, 2011 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement is 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 Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance 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 county development authority and is a public corporation with perpetual existence in Ohio County of the State of West Virginia, with full power and authority to acquire and construct the Project, to transfer the Series 2011 Facilities to Ohio County Public Service District and the City of Wheeling to enact the Ordinance 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 and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer, without the written consent of the Authority and the Council.

4. The Issuer has legally and effectively adopted the Ordinance and all other necessary resolutions, orders or ordinances in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement, as modified by the Special Conditions set forth in Schedule Z to the Loan Agreement.

5. 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 and secured by a first lien on (i) the revenues derived from the Leases and an Assignment of Rents and Leases, shared with WesBanco Bank, Inc. as owner of the Prior Obligations on a Last-in/Last-out basis, subject to the Intercreditor Agreement, (ii) a first lien on designated real property pursuant to a Credit Line Deed of Trust, Security Agreement and Fixture Filing that is on a parity and pro rata with the shared lien on such real property of WesBanco Bank, Inc. and subject to the Intercreditor Agreement, and (iii) a pledge of the Surplus Revenues of the Issuer.

6. Under the Act, the Bonds and the interest, if any, thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

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

Very truly yours,

Jackson Kelly PLLC

Dinsmore&Shohl LLP
ATTORNEYS

Dinsmore Shohl 100 1908 - 2008

Christopher P. Riley
(304)230-1633
christopher.riley@dinslaw.com

February 28, 2011

Ohio County Development Authority
1500 Chapline Street
Wheeling, West Virginia 26003

West Virginia Infrastructure and Jobs Development Council
180 Association Drive
Charleston, West Virginia 25311

West Virginia Water Development Authority
160 Association Drive
Charleston, West Virginia 25311-1217

Jackson Kelly PLLC
500 Lee Street, East
Charleston, West Virginia 25301-2189

Re: Ohio County Development Authority Water Project Bonds, Series 2011 A (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We are counsel to Ohio County Development Authority (the "Issuer"). As such counsel, we have examined copies of the approving opinions of Jackson Kelly PLLC, as bond counsel, relating to the above captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Series 2011 A Bonds, dated February 28, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), a Bond Ordinance duly enacted by the Board of the Issuer (the "Board") on April 20, 2010, as supplemented by a Supplemental and Amendatory Resolution duly adopted on February 23, 2011 (collectively, the "Ordinance"), orders of The County Commission of Ohio County relating to the creation of the Issuer and the appointment of members of the Board, and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Loan Agreements and the Ordinance when used herein.

We are of the opinion that:

1. The Issuer is a duly created and validly existing county development authority and is a public agency and political subdivision of the State of West Virginia and a public corporation with

perpetual existence in Ohio County, with full power and authority to acquire and construct the Project, to transfer the Series 2011 Facilities to Ohio County Public Service District and to adopt the Ordinance, all under the Act and other applicable provisions of law.

2. The members and officers of the Board have been duly and properly appointed and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Issuer in their respective capacities.

3. 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.

4. The Ordinance has been duly enacted by the Board 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 Agreements and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates, registrations and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the transfer of the Series 2011 Facilities to Ohio County Public Service District and the City of Wheeling, including, without limitation, all requisite permits, approvals, orders and certificates from The County Commission of Ohio County, the West Virginia Bureau for Public Health, the Council and the Public Service Commission of West Virginia (the "PSC").

7. 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, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds, the Deed of Trust, the Assignment of Rents and Leases and the Ordinance, the acquisition and construction of the Project, the operation of the Series 2011 Facilities, the validity of the Bonds, the collection of the revenues of the Leases or the pledge of the first lien on the property subject to the Leases or the pledge of the Surplus Revenues for the payment of the Bonds as described in the Ordinance, with the exception that the following civil actions that may affect the priority of liens on the pledged property if a judgment is rendered during present term of court, which ends May 8, 2011:

a) *Savage Construction Co. v. Ohio County Development Authority*, Civil Action No. 10-C-405 (REW) (Ohio County Circuit Court, West Virginia), in which the plaintiff seeks to have an March 12, 2010 arbitrator's award for $260,099.94 entered as a judgment against the Issuer. Issuer and plaintiff are actively negotiating an agreement on payment and satisfaction of the award without entry of judgment. Counsel for the Issuer anticipates that a definite, written agreement will be reached by March

1, 2011. Issuer has advised that the award amount is subject to possible offset from a cross-claim against plaintiff in excess of $900,000 asserted in the civil action referenced below.

b) *Kelly Paving, Inc. v. Savage Construction Company and Ohio County Development Authority*, Civil Action No. 10-C-444 (REW) (Ohio County Circuit Court, West Virginia), in which Kelly Paving, Inc. presented breach of contract claims against Savage Construction Company and an unjust enrichment claim against the Issuer related to the preceding civil action. No scheduling order has been entered or trial date, set. Disposition of this action during the present term of court is not reasonably likely.

8. We have ascertained that all successful bidders have provided the drug-free workplace affidavit, submitted their drug-free workplace plan, and the contracts contain language that comply with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. We have also ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and we have reviewed such insurance policies or binders and such bonds for accuracy. We have reviewed the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project and verified that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreements; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

In our examination of the documents referred to above, we have assumed, without independent investigation, the genuineness of all signatures, the legal capacity of all individuals who have executed any of the documents reviewed by us, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as certified, photostatic or reproduced or conformed copies of validly existing agreements or other documents, and the authenticity of all such latter documents and that the statements regarding the matters of fact in the certificates, records, agreements, instruments and documents that we have examined are accurate and complete.

We have also assumed, without independent investigation, that the Loan Agreement has been duly authorized and executed by, and represents a legal, valid and binding obligation of, each party thereto other than the Issuer.

Whenever we indicate that our opinion is based upon our knowledge or words of similar import, our opinion is based solely, without independent verification, on the actual knowledge of the attorneys in this firm who are representing the Issuer in connection with the Loan Agreement or any other matter.

This Opinion is subject to the effect of liquidation, conservatorship, insolvency, bankruptcy, reorganization, moratorium, and similar debtor relief laws of general application; to the power of courts to award damages in lieu of granting equity remedies (including the equity remedy of specific performance) and other generally applicable federal and state laws, statutes, ordinances, rules and regulations and generally applicable principles which may modify, limit, render, unenforceable, or delay certain rights and remedies of Lender but which, in our opinion, except for the economic consequences of any such

judicial or other procedural delay or impediment which may be imposed by, relate to, result from such generally applicable laws, statutes, ordinances, rules, regulations, and decisions, will not materially diminish the practical realization of the benefits intended to be conferred by the Loan Documents.

This Opinion is as of the date hereof and we undertake no, and hereby disclaim any, obligation to further advise you of any change in any matter set forth herein. This opinion is limited to the laws of the State of West Virginia and the federal laws of the United States and is rendered only with respect to the laws, and the rules, regulations, and orders thereunder, which are currently in effect. This opinion is furnished by us solely for your benefit and the benefit your legal counsel in connection with the transactions referred to above and may not be circulated to, or relied upon by, any other person without our prior written consent.

Very truly yours,

Christopher P. Riley

Dinsmore&Shohl LLP
ATTORNEYS

Christopher P. Riley
(304)230-1633
christopher.riley@dinslaw.com

February 14, 2011

Ohio County Development Authority
1500 Chapline Street
Wheeling, West Virginia 26003

West Virginia Infrastructure and Jobs Development Council
180 Association Drive
Charleston, West Virginia 25311

West Virginia Water Development Authority
160 Association Drive
Charleston, West Virginia 25311-1217

Jackson Kelly PLLC
500 Lee Street, East
Charleston, West Virginia 25301-2189

Re: Final Title Opinion for Ohio County Development Authority

Ladies and Gentlemen:

I am counsel to the Ohio County Development Authority (the "Issuer") in connection with a proposed project to construct certain waterworks facilities to be located in Ohio County (the "Project"), which shall be constructed, acquired, and transferred to the City of Wheeling and the Ohio County Public Service District by the Issuer. I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council and 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 county development authority and is a public corporation with perpetual existence in Ohio County under the laws of the State of West Virginia and is authorized to construct, acquire, and transfer the Project to the City of Wheeling and Ohio County Public Service District 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. I have investigated and ascertained the location of, and I am 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 by Vaughn Coast & Vaughn, Inc., the consulting engineers for the Project.

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4. I have examined the records on file in the Office of the Clerk of The County Commission of Ohio County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate, easements, or interests in all of the necessary site components for the Project 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 and assigned to the Issuer have been duly recorded in the Office of the Clerk of The County Commission of Ohio County to protect the legal title to and interest of the Issuer.

Very truly yours,

Christopher P. Riley

CPR/mld