

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

Closing Date: November 5, 2008

TRANSCRIPT OF PROCEEDINGS

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>INDEX NO.</u>
<u>I. Organizational Documents</u>		
1.1	Certified copies of Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended.	1
1.2	Charter.	2
1.3	Oaths of Office of Mayor, Recorder and Council Members.	3
1.4	Rules of Procedure of Council.	4
<u>II. Authorizing Documents</u>		
2.1	Public Service Commission Order.	5
2.2	(A) USDA Letter of Conditions dated July 31, 2006 and USDA Letter of Conditions dated March 18, 2008, Closing Letter and Loan Resolution.	6
	(B) Minutes of Council Meeting regarding Adoption of USDA Loan Resolution.	
2.3	Rate Ordinance.	7

2.4	Minutes of Council Meetings regarding all readings and Public Hearing of the Rate Ordinance.	8
2.5	Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.	9
2.6	Bond Ordinance.	10
2.7	Supplemental Resolution.	11
2.8	Minutes of Council Meetings regarding all readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.	12
2.9	Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.	13
2.10	Specimen Bonds. (A) Series 2008 A. (B) Series 2008 B.	14
2.11	Bond Register. (A) Series 2008 A. (B) Series 2008 B.	15
2.12	(A) 1996 Bond Ordinance and Supplemental Resolution. (B) 1998 Bond Ordinance and Supplemental Resolution. (C) 2003 Bond Ordinance and Supplemental Resolution. (D) 2006 Bond Ordinance and Supplemental Resolution.	16
2.13	West Virginia Water Development Authority Consent to Issuance of Parity Bonds.	17

### III. Certificates, Receipts and Other Documents

3.1	General Certificate.	18
3.2	Certificate of Recorder As To Truth and Accuracy of Documents Delivered.	19

3.3	Certificate of Consulting Engineer.	20
3.4	Certificate of Accountant.	21
3.5	Certificate of No Litigation.	22
3.6	Receipt for Bonds.	23
3.7	Receipt for Bond Proceeds.	24
3.8	Acceptance of Appointment As Depository Bank.	25
3.9	Municipal Bond Commission New Issue Report Forms.	26
3.10	Environmental Health Services Permit.	27
3.11	Evidence of Insurance.	28
3.12	Closing Memorandum.	29

#### IV. Opinions

4.1	Opinion of Jackson Kelly PLLC, Bond Counsel on Series 2008 A Bonds.	30
4.2	Opinion of Jackson Kelly PLLC, Bond Counsel on Series 2008 B Bonds.	31
4.3	Opinion of Counsel to Issuer.	32
4.4	Final Title Opinion.	33
4.5	Opinion of PSC Counsel.	34

Pre-Closing  
CITY COUNCIL  
ST. MARYS, WV

Nov 3, 2008

NAME	ORIGIN
1. Ryan White	Jackson Kelly
2. HARRY JAMOR	USDA-RURAL DEVELOPMENT
3. Bruce Caswell	WELPING, Tare
4. L. Paul Ingram	MAYOR, ST. MARYS
5. Tom Painter	City Manager, ST. MARYS
6. Vic Wilford	S&S ENGINEERS
7. Claude Marra	S:8
8. LINDA K. Wilson	City Recorder, ST. MARYS
9. Alan L. Harris	USDA Rural Development
10. Ashok M. Sanghavi	S&S Engineers, Inc.
11. <del>Victor Wilford</del>	"
12. Sammie Lee	Jackson Kelly PLLC
13. Keith White	City Attorney
14. Virginia McDonald	USDA-RD
15.	
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# State of West Virginia



## Certificate

*I, Betty Ireland, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 20 OF THE WEST  
VIRGINIA CODE, AND CHAPTER 8 ARTICLE 20 OF THE 2008 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*

October 31, 2008

*Betty Ireland*  
Secretary of State

## ARTICLE 20

### COMBINED WATERWORKS AND SEWERAGE SYSTEMS

#### Part I—Combined Waterworks and Sewerage Systems Authorized; Definitions.

##### Section

- 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.
- 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.
- 8-20-1b. Cooperation with other governmental units.
- 8-20-1c. Severance of combined system.

#### Part II—Right of Eminent Domain.

- 8-20-2. Right of eminent domain; limitations.

#### Part III—Revenue Bond Financing.

- 8-20-3. Ordinance describing project; contents.
- 8-20-4. Publication of abstract of ordinance and notice; hearing.
- 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
- 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.
- 8-20-7. Lien of bondholders.
- 8-20-8. Covenants with bondholders.
- 8-20-9. Operating contract.
- 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- 8-20-11. Discontinuance of water service for nonpayment of rates or charges.
- 8-20-11a. Governmental entities subject to established rates.
- 8-20-12. Use of revenues; sinking fund.
- 8-20-13. System of accounts; audit.
- 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.
- 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

#### Part IV—Grants, Loans and Advances; Cumulative Authority.

- 8-20-16. Grants, loans and advances.
- 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

#### Part V—Operation by Board; Construction.

- 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.
- 8-20-19. Article to be liberally construed.

## PART I—COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS

## § 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, conve-

nient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination.

Acts 1939, c. 98, §§ 1, 2; Acts 1947, c. 112; Acts 1955, c. 131; Acts 1969, c. 86.

**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.

**Library References**

**Key Numbers**

Municipal Corporations ⇨708.  
 Waters and Water Courses ⇨183.  
 Westlaw Key Number Searches: 268k708;  
 405k183.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to 1536.  
 C.J.S. Waters §§ 228, 235.

**Notes of Decisions**

**New and annexed tracts 1**

**1. New and annexed tracts**

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1)

If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right to extend water and/or sewer service which were not being previously fur-

nished to the tract by the public service district, and under those circumstances, a public service district would need the consent of the municipality and the Public Service Commission (PSC) in order to provide such service. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1)

Awarding sewer and water service rights in newly developed tract to city, rather than to sewer and water districts, could reasonably be expected to provide appropriate protection to the relevant public interests, both existing and foreseeable. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1)

**§ 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions**

(a) Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system either wholly within or partly within and partly without the corporate limits thereof under the provisions of this article, and any municipality owning and operating a waterworks and sewerage system, but not a stormwater system, may acquire, construct, establish and equip the stormwater system which it does not then own and operate, and such municipality may provide by ordinance that when such stormwater system shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operat

ing an existing waterworks system, sewerage system, and stormwater system, may by ordinance combine the same into a single undertaking under the provisions of this article. However, no municipality may acquire, construct, establish and equip or thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system which includes 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.

(b) Any municipality which has combined its waterworks, sewerage system and stormwater systems under the provisions of this article, or pursuant to the provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to any of the systems, any combination thereof, or all of the waterworks, sewerage and stormwater systems of said combined waterworks, sewerage and stormwater system, and may finance the acquisition, construction, establishment and equipment thereof, or the construction or extensions, additions, betterments and improvements thereof by the issuance of revenue bonds under the provisions of this article.

(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer or stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

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

(1) "Stormwater system" 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 ways, 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 system" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(2) "Combined waterworks, sewerage and stormwater system" means a waterworks, sewerage and stormwater system which a municipality determines by ordinance to operate in combination.

(3) "Combined system" means either a combined waterworks, sewerage and stormwater system, or a combined waterworks and sewerage system.

(4) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems, and shall include and 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 1976, c. 83; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ☞708.  
 Waters and Water Courses ☞183.  
 Westlaw Key Number Searches: 268k708;  
 405k183.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to  
 1536.  
 C.J.S. Waters §§ 228, 235.

**§ 8-20-1b. Cooperation with other governmental units**

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the state of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof.

Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**§ 8-20-1c. Severance of combined system**

Any municipality which has combined its waterworks and sewerage systems or waterworks, sewerage and stormwater systems, under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined system into separate systems.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined system, or any part thereof, are outstanding, then the municipality must provide in said ordinance that the severance of the combined system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of the committee, board or commission, and the creation of other committees, boards or commissions as may be required by law.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ☞708.  
Waters and Water Courses ☞183.  
Westlaw Key Number Searches: 268k708;  
405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to  
1536.  
C.J.S. Waters §§ 228, 235.

## PART II—RIGHT OF EMINENT DOMAIN

### § 8-20-2. Right of eminent domain; limitations

For the purpose of acquiring, constructing, establishing or extending any system within a combined system, or a combined system, or for the purpose of constructing any additions, betterments or improvements to any system within a combined system, or a combined system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any system within a combined system, or combined system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system may not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of the municipality a municipal waterworks system or a combined system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined system in the municipality or within the proposed extension of the system, unless, except in the case of a stormwater system, a certificate of public convenience and necessity therefor shall have been issued by the public service commission:

Provided, however, that the power of eminent domain provided in this section shall not extend to 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 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Eminent Domain 28, 32.  
Westlaw Key Number Searches: 148k28;  
148k32.

##### Encyclopedias

C.J.S. Eminent Domain §§ 38 to 39, 44 to 45.

### PART III—REVENUE BOND FINANCING

#### § 8-20-3. Ordinance describing project; contents

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined system any existing waterworks system or any existing sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall provide that it or they be so included in the combined system and shall describe in a general way such existing waterworks or sewerage system or both, or, if applicable, any existing stormwater system, or any of them, or all of them, to be included in the combined system. The ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them. The ordinance shall determine the period of usefulness of the contemplated project.

If it is intended to acquire, construct, establish and equip a combined system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of the combined system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed.

The ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with the bonds considered advisable. The ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

Acts 1939, c. 98, § 4; Acts 1947, c. 112; Acts 1949, c. 91; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## Library References

## Key Numbers

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

## Encyclopedias

C.J.S. Municipal Corporations § 991.

**§ 8-20-4. Publication of abstract of ordinance and notice; hearing**

After the ordinance for any project under the provisions of this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests and that a certified copy of the ordinance is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

Acts 1939, c. 98, § 5; Acts 1947, c. 112; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 103; Acts 1981, 1st Ex. Sess., c. 2.

## Library References

## Key Numbers

Municipal Corporations ☞294(7).  
Westlaw Key Number Search: 268k294(7).

## Encyclopedias

C.J.S. Municipal Corporations § 981.

**§ 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds**

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any system within a combined system, or a combined system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to any of the systems of said combined system, or all of them, any such municipality may issue revenue bonds under the provisions of this article.

All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness

of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. The bonds may be in denomination or denominations, may be in such form, either coupon or registered, may carry registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

The bonds and the interest thereon, together with all properties and facilities of the municipality owned or used in connection with the combined system, and all the moneys, revenues and other income of such municipality derived from the combined system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Bonds may be sold in such manner as the governing body shall determine. If any bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost to the municipality of the proceeds of the bonds may not exceed thirteen percent per annum computed to maturity according to the standard table of bond values.

If the governing body of the municipality determines to sell any revenue bonds of such combined system for refunding purposes, the proceeds of the bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby.

In case any officer whose signature appears on the bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he or she had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. The bonds shall have all the qualities of negotiable instruments under the laws of this state.

Whenever a waterworks and sewerage system or stormwater system, if applicable, is included in a combined system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of the waterworks or the sewerage system or stormwater system, if applicable, or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article.

Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system, or stormwater system, if applicable, included in a combined system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier.

Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but each bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.

Acts 1939, c. 98, § 3; Acts 1947, c. 112; Acts 1957, c. 123; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ☞911, 922.  
Taxation ☞218.  
Westlaw Key Number Searches: 268k911;  
268k922; 371k218.

##### Encyclopedias

C.J.S. Municipal Corporations § 1649.  
C.J.S. Taxation § 260.

#### § 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined system, and the bonds may not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of the municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

Acts 1939, c. 98, § 6; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## Library References

## Key Numbers

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

## Encyclopedias

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

## § 8-20-7. Lien of bondholders

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. However, no lien may attach to any portion of any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five hereof. Any revenue bonds so issued in payment for an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## Library References

## Key Numbers

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

## Encyclopedias

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

## § 8-20-8. Covenants with bondholders

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the state, for the security of said bonds, which any municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of the bonds as to:

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

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of rates, fees or charges for the use of the services and facilities of the combined system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of bonds;

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

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

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

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

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

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

Any ordinance or trust indenture may also contain other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and

authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

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

**Encyclopedias**

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

**§ 8-20-9. Operating contract**

Any municipality may enter into contracts or agreements with any persons for: (1) The repair, maintenance and operation and management of the facilities and properties of the combined system, or any part thereof; or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for the period of time and under terms and conditions as shall be agreed upon between the municipality and such persons. Any municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing the bonds, that the contracts or agreements shall be valid and binding upon the municipality as long as any of the bonds, or interest thereon, is outstanding and unpaid. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ⇨708.  
Waters and Water Courses ⇨183.  
Westlaw Key Number Searches: 268k708;  
405k183.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to 1536.  
C.J.S. Waters §§ 228, 235.

**§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure**

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or stormwater facilities constructed;

owned or operated by the West Virginia Division of Highways except in accordance with chapter twenty-nine-a of this code.

Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish rates, fees or charges for such purpose. Separate rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or charges for the combined water and sewer services, and, if applicable, the stormwater services. Such rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for the purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the

evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency had been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ⇨708.  
 Waters and Water Courses ⇨183.  
 Westlaw Key Number Searches: 268k708;  
 405k183.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to 1536.  
 C.J.S. Waters §§ 228, 235.

**Notes of Decisions**

**Tort liability 1**

**1. Tort liability**

A municipal ordinance that is enacted pursuant to the statutory power granted to municipalities to construct, operate, maintain, care for, and protect a sewer system, and that purports

to limit, modify, or eliminate tort liabilities and immunities related to that sewer system in a fashion that conflicts with the general law of the state, is unenforceable and void, to the extent of such conflict. Code, 8-20-10, 29-12A-5(a)(16). Calabrese v. City of Charleston, 1999, 515 S.E.2d 814, 204 W.Va. 650. Municipal Corporations ⇨ 70

**§ 8-20-11. Discontinuance of water service for nonpayment of rates or charges**

Any municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of the combined system for the nonpayment of the rates, fees or charges for said water service or sewer service, or both, or, if applicable, stormwater service, or any combination thereof, or all of them.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Waters and Water Courses ⇨203(13).  
 Westlaw Key Number Search: 405k203(13).

**Encyclopedias**

C.J.S. Waters § 305.

**§ 8-20-11a. Governmental entities subject to established rates**

The municipality and any county government, state government and federal government served by the services of the combined system shall be subject to the same rates, fees or charges established in this article 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 shall be considered to be part of the revenue of the combined system as defined in this article, and be applied as provided in this article, for the application of such revenues. However, no rates, fees or

charges for combined services or 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.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

### § 8-20-12. Use of revenues; sinking fund

All revenues derived from the operation of any combined system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any bonds are issued shall pledge the revenues derived from the combined system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which the bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof.

Acts 1939, c. 98, § 9; Acts 1969, c. 86; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

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

##### Encyclopedias

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

### § 8-20-13. System of accounts; audit

Any municipality operating a combined system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from the combined system and the application of the same. At least once each year the municipality shall cause the accounts to be properly audited, and a report of the audit shall be open to the public for inspection at all reasonable times.

Acts 1939, c. 98, § 10; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ885.  
Westlaw Key Number Search: 268k885.

##### Encyclopedias

C.J.S. Municipal Corporations § 1629.

**§ 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits**

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system.

Acts 1957, c. 127; Acts 1969, c. 86.

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

**Library References**

**Key Numbers**

Municipal Corporations ⇨708.  
Westlaw Key Number Search: 268k708.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to 1536.

**§ 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership**

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven 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 ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates, fees or charges for services rendered by the combined system.

If there be default in the payment of the principal of or interest upon any of bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates, fees or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and the receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which the bonds have been issued or trust indenture, or both.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ⇨955(1).  
Westlaw Key Number Search: 268k955(1).

## PART IV—GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY

**§ 8-20-16. Grants, loans and advances**

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

In no event shall any loan or temporary advance be a general obligation of the municipality and the loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1961, c. 106; Acts 1969, c. 86; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References****Key Numbers**

United States § 82(2).

Westlaw Key Number Search: 393k82(2).

**Encyclopedias**

C.J.S. United States § 155.

**§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority**

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any undertaking or to the

issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article: Provided, however, that no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system which includes 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.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

Acts 1933, Ex. Sess., c. 26, § 13; Acts 1969, c. 86; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### PART V—OPERATION BY BOARD; CONSTRUCTION

### § 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system

(a) As an alternative to the procedure provided in this article, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by the governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

However, no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes 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.

(b) In the event that the waterworks or sewerage system or both, or if applicable, stormwater services, are in existence prior to the creation of the combined system, and the waterworks or sewerage system or both, and if applicable, stormwater services, are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this

section is to be followed with respect to the supervision and control of the combined system, the governing body may by ordinance, after the creation of the combined system, provide:

(1) The manner of and procedure for transferring supervision and control from each separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined system; or

(2) The manner of and procedure for combining each separate committee, board or commission into one committee, board or commission and transferring thereto supervision and control as aforesaid.

Acts 1961, c. 104; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ708.

Waters and Water Courses Ⓒ183.

Westlaw Key Number Searches: 268k708;  
405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to  
1536.

C.J.S. Waters §§ 228, 235.

#### § 8-20-19. Article to be liberally construed

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

Acts 1933, Ex. Sess., c. 26, § 14; Acts 1969, c. 86.

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

2008  
Cumulative Annual Pocket Part

Replacing 2007 Pocket Part supplementing 2002 Main Volume

Includes laws through the 2008 First Extraordinary Session

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that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective the first day of July, two thousand seven, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the regular session of the Legislature in the year two thousand and eight. A permit or other written approval shall be obtained from the Department of Health and Human Resources for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia Code as amended: *Provided, however*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility: *Provided further*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health and Human Resources.

Acts 1994, c. 31; Acts 2007, c. 187, eff. June 16, 2007.

ARTICLE 20

COMBINED SYSTEMS

Part III—Revenue Bond Financing.

Section

Section

8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to

cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

PART III—REVENUE BOND FINANCING

§ 8-20-10. **Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure**

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do: *Provided*, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for

the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of one hundred dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to one hundred dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate to be set by the Public Service Commission: *Provided*, That where the customer is a tenant, the municipality governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may terminate water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided*, That any termination of water service must comply with all rules and orders of the Public Service Commission.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided shall be delinquent and the municipality or governing body may apply any deposit against any delinquent fee. The user is liable until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The municipality has the plenary power and authority to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to filing an action in magistrate court for collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through a civil action in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality has exhausted all other remedies for collection of debts with respect to such delinquencies prior to bringing the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency has been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

(f) Notwithstanding any other provision contained in this article, a municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. § 122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or acts are not contrary to any rules or orders of the Public Service Commission.

(g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct violation of the municipal stormwater ordinance or regulation, the municipality may correct or have the corrections of the violation made and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2008, c. 202, eff. March 8, 2008.

**ARTICLE 21**

**BOARD OF PARK AND RECREATION COMMISSIONERS**

**Part I—Establishment; Organization.**

**Section**

8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

**PART I—ESTABLISHMENT; ORGANIZATION**

§ 8-21-2. **Board a public corporate body; perpetual existence; seal; name; powers**

**Notes of Decisions**

2. **Powers and duties of boards, generally** exercise the powers of a public corporate body. 55  
 It is unnecessary for a public corporate body to obtain a corporate charter from the office of the Secretary of State; a private corporation cannot  
 W.Va. Op.Atty.Gen. 214 (February 13, 1974) 1974  
 WL 174275.

# City of St. Marys

**Mayor**  
Louis F. Flade

**City Manager**  
Roy G. Hearn

**City Recorder**  
Linda K. Wilson

418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

May 14, 1996

**Councilpersons**

**Ward I**  
Lyle Meeks  
Gene Dutton

**Ward II**  
Richard McCullough  
Jack Johnson

**Ward III**  
C. A. (Mike) Hendricks  
Larry Burns

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, Linda K. Wilson, City Recorder for the City of St. Marys, WV, do hereby certify that the attached copies of the City Charter and any amendments thereto, are true and accurate copies of the originals on file in my office.

  
\_\_\_\_\_  
Linda K. Wilson  
City Recorder

2

**CITY CHARTER**

**CITY OF SAINT MARYS  
WEST VIRGINIA**

**PLEASANTS COUNTY**

**JUNE 30, 1930**

ENROLLED BILL

(H. B. No. 253)

AN ACT to amend and re-enact the several acts incorporating the town of St. Marys, which was done by an order of the circuit court of Pleasants County, West Virginia, on the twenty-third day of April, one thousand eight hundred and eighty; and by an act of the legislature of West Virginia, passed February fifteen, one thousand nine hundred and one, incorporating and creating the city of St. Marys, in Pleasants County, and approved by the governor February eighteen, one thousand nine hundred and one, and being known and denominated Chapter one hundred and forty-seven of the acts of the regular session, of one thousand nine hundred and one. And also an act denominated chapter nine, of the acts of the legislature of West Virginia, regular session, of one thousand nine hundred and seven entitled: An act to amend and re-enact chapter one hundred and forty-seven of the acts of one thousand nine hundred and one, incorporating the city of St. Marys, in relation to section nine and twenty-nine of said act, which act was passed February nineteen, one thousand nine hundred and seven, and became a law ninety days from its passage: to take in additional territory and add certain amendments to said charter: "and providing for a charter election to be held submitting to the voters of the territory within the present city of St. Marys and to those living within the additional territory, to vote thereon at an election to be held for that purpose, to be fixed and held under the supervision of the present municipal government of the city of St. Marys.

"Be it enacted by the legislature of West Virginia:

"That in order to amend, revise and consolidate into one act, and order of the circuit court of Pleasants County, West Virginia, made and entered into on the twenty-third day of April, one thousand eight hundred and eighty, incorporating the town of St. Marys, in Pleasants County, in said state; an act of the legislature of West Virginia, denominated and known as chapter one hundred and forty-seven of the acts of said West Virginia legislature of one thousand nine hundred and one, passed February fifteen, one thousand nine hundred and one, incorporating the city of St. Marys in said Pleasants County, and also an amendment to said charter of said city of St. Marys, being chapter nine of the acts of 1907, passed February nineteen, 1907, amending sections 9 and 29 of said chapter 147, aforesaid, and to embody in this act and chapter all of said acts heretofore enacted and passed, that of the circuit court of Pleasants County, and the acts of West Virginia legislature; to take in additional territory and add certain amendments to said chapter and to submit to the voters of said city in the territory within the present city limits and that to be included in this act, at a charter election to be fixed and held by the present municipal government now in power, and if adopted by a majority of all the legal votes cast at such election this act from and after the date of said election shall be and remain the charter of "The City of St. Marys."

Section 1. That the inhabitants of so much of the county of Pleasants as is within the bounds described by section two of this act, and their successors, shall be and remain, and they are hereby made a body politic and corporate by the name of "The City of St. Marys," and as such shall have perpetual succession and a common seal and by that name may sue and be sued, plead and be impleaded, lease and hold real estate and personal property necessary to the purpose of said corporation.

**Section 2. The corporate limits of said city shall hereafter be as follows:**

Beginning at the edge of the Ohio River, said starting point being down the river 1190 feet from North corner of Cain House; thence by surveys as the magnetic needle now points, S. 34-3/4 E. 1552 feet to center of run above stone quarry; thence N. 73 E. 2770 feet; thence N. 17-1/3 E. 300 feet above turn in pike; thence N. 38 E. 433 feet near water trough; thence N. 31-1/4 E. 1600 feet; thence N. 21-3/4 E. 3182 feet to M. I. Creek; thence down the creek with the meanders thereof, N. 51 W. 452 feet; N. 57-1/2 W. 258 feet; N. 78 W. 177 feet; S. 88 W. 570 feet corner of county bridge; thence N. 85 W. 557 feet across B & O Right-of-Way; thence parallel with the same S. 25 W. 992 feet; S. 36-1/4 W. 1360 feet to old corporation line; thence N. 60-1/2 W. 222 feet; S. 31-1/2 W. 1553 feet; N. 84-1/2 W. 147 feet to river edge; thence with meanders of same, S. 19-1/2 W. 315 feet; S. 29 W. 975 feet; S. 42-1/2 W. 995 feet; S. 45 W. 227 feet; S. 47 W. 211 feet; S. 50 W. 307 feet to the place of beginning.

**Section 3. The territory of said city is hereby divided into three wards, each of which is bounded and described as follows:**

**First Ward:** All that part of the territory above described lying south of a line running from the thoroughfare with the center of Washington Street to the east line of said corporation line near what is known as the Horseshoe Bend, shall constitute the first ward.

**Second Ward:** All that part of said territory above described, included between the center of Washington Street and Sycamore Street of said city and extending from the thoroughfare and corporation line on the west to the east line of said corporation shall be and constitute the second ward.

**Third Ward:** All of the remainder of said territory lying north and east of the said Sycamore Street and up to Middle Island Creek, beginning with the line of said corporation at a point of intersection of said second ward, with the eastern and northern boundary thereof, and binding thereon with the line of said corporation back to its intersection at the end of said second ward, shall be and constitute the third ward of said city. Said three wards so formed as aforesaid, to be and remain as constituted and laid down until changed by the municipal authorities of said city as provided by law.

**Section 4. The municipal authorities of said city shall consist of a mayor and two councilmen from each ward, six councilmen in all, until additional wards be added to said city, who together shall form the common council. The mayor to be elected bi-annually and held for the term of two years; and all councilmen, after the first election, shall be elected for the term of four years. At the first election one councilman shall be elected for two years and one for four years, to be so designated on the ballot, they to hold their office for and during the term for which they are elected and until their successors are elected and qualified. The mayor must be a bona fide free holder of said city, and the councilmen must be bona fide residents and free holders, or if not free holders, possessed of at least five hundred dollars worth of personal property at the time of their election. The mayor and councilmen to receive such compensation for their services as the council shall from time to time fix and determine; but, after the first election the council in being shall fix the salary and compensation for the incoming officers. And it is further provided that the mayor and councilmen of said city shall not be interested directly or indirectly in any contract for the furnishing of the city with supplies or other property, or to become party or privies to any contract, directly or**

indirectly, whereby they can or may receive anything in money from said city, other than the salary fixed and allowed by this charter. And the mayor and councilmen, or any one of them may be removed from office for malfeasance in office or for neglect or failure to discharge the duties imposed upon them by law, upon written charges preferred against them in the same manner and according to the same rule governing the removal of county and district officers. And the councilmen in being at the time of such removal or resignation of the mayor or any councilman shall fill the same by appointment until the next general election.

Section 5. All the corporate powers of said corporation shall be exercised by said council or under their authority, except when otherwise herein provided.

Section 6. The appointed officers of this municipality shall consist of a recorder, chief of police and his assistants, city collector, health officer, city attorney and city manager, all of whom are to be appointed by the council and hold their office during the pleasure of the council, subject to removal for causes.

Section 7. The city recorder shall be required to keep a record of all proceedings, including the minutes of all meetings of the council, which shall be kept, in a well-bound book and properly indexed, and shall also issue all orders for moneys on the treasury, which order must be countersigned by the mayor and city recorder; and such city recorder may be required to keep any other records or do such clerical work as pertain to the municipal government of said city, or that is required to be done under the direction and supervision of the city manager, and shall receive such monthly compensation by way of salary as shall be fixed by the council payable monthly. The city collector, shall before entering upon the duties of his office, give such bond as the council may require, payable to the City of St. Marys for the faithful receiving and accounting for all monies that may come into his or her hands, and shall collect all monies for taxes, licenses, water rent, or other levies and all taxes on dogs, and shall not pay out any monies, except on orders ordered by the council and countersigned by the recorder and mayor; and shall render quarterly statements to the council or finance committee of the status and amount of monies on hand, including all collections and disbursements for each three months during his or her incumbency in office; and he or she shall, at the end of their term of office account for and pay over all monies remaining in his or her hands and turn over all uncollected taxes, licences and bills of any kind whatsoever, to his or her successor in office; and a failure so to do shall not only hold her or him liable under their bond, but a willful neglect so to do shall be deemed a felony for which he or she may be prosecuted therefor.

The city health officer shall perform such duties as the council by ordinance may prescribe, in conjunction with the rules and regulations governing the health department of said city and as are prescribed by the State Board of Health, and he may be removed from office at any time for willful neglect of duty.

The city attorney shall do all the legal work required to be done by the council, pertaining to the affairs of said municipality, and shall advise the council at the regular or special meetings of the same and prosecute and defend all suits brought by the city or instituted against it; and shall advise the mayor and other officers in this municipality when so requested, and shall do and perform all other duties as may be required by the municipal government.

The said council may appoint a chief of police and such assistants as are necessary, and the mayor may in an emergency and at the time the council is not in session, appoint special police on extraordinary occasions, if deemed necessary, and said chief of police and police officers are subject to control absolutely of the mayor, except when the council is in session.

All the foregoing officers, namely, city collector, city health officer, city attorney, chief of police and police officers, shall receive such pay and compensation, either monthly or otherwise, or to the city collector a commission on receipt, as the council in regular session may fix and determine; they to be paid monthly thereof; subject to removal as aforesaid for cause by the council.

The council shall, at the beginning of their term, appoint some person qualified and efficient for that purpose, as city manager, who shall hold office at the pleasure of the council and have full charge and authority over all the municipal affairs of said city; except that pertaining to city recorder, city collector, health officer, city attorney and police officers, and shall have general supervision over the control, direction and management of the streets and alleys of said city and control the water works, and shall employ and install such person or persons as are competent and efficient to do and perform the work and control the laying of all pavements, side walks, and water lines; manage and control all connections for water to be made by persons, corporation or individuals so requiring water, to see that the water service is properly looked after and maintained, and to keep and to cause to have kept a record in a book for that purpose, the names of all water consumers to whom the city furnishes water or sells the same, rendering to the city collector monthly accounts of all water so sold to consumers within the city or elsewhere, subject to ordinances to be enacted by the council. And shall see that the streets and alleys of said city are kept clean and in a sanitary condition, and to see that the owners of real estate do not encroach upon the city, nor permit anything obnoxious, unsanitary or otherwise, to be kept within the corporate limits which is a menace to the health or comfort of the citizens, subject nevertheless to sections 22-b; and shall cause all property owners to keep and maintain their property safe from fire; and in conjunction with the police of said city, shall inspect all buildings at such times and under such conditions as may be necessary as provided by this charter, or ordinances passed in pursuance thereof. Said city manager to do and perform such other duties as may be required of him or prescribed by proper orders or ordinances adopted and entered of record by the council, and shall receive such monthly compensation as may be fixed by the council and entered of record during his term of office, payable monthly, and he may be removed for cause.

Section 8. The first election shall be held hereunder on the second Tuesday in June, one thousand nine hundred and twenty-one, beginning on the said second Tuesday in June, one thousand nine hundred and twenty-one, and thereafter every two years. At each election there shall be elected a mayor for the term of two years; as hereinbefore provided, one councilman for two years in each ward, and one councilman for four years in each ward; and thereafter there shall be only one councilman elected in each ward, biennially for two years. The terms of all officers so elected on the second Tuesday in June, beginning with the second Tuesday of June 1921, and thereafter every two years, shall be on the first day of July following their election, and they shall hold until their successors are elected and qualified according to law.

Section 9. The elective officers under this charter shall be nominated by a non-partisan mass convention to be held at least twenty days before the regular election to be held for mayor and councilmen, at which convention at least one and not more than two persons shall be nominated for mayor; and after the first election held under this charter, at least one and not more than two persons shall be nominated for mayor; and after the first election held under this charter, at least one and not more than two persons shall be nominated for council, from each ward of said city. And municipal authorities of this city are hereby relieved from holding any primary election for the nomination of its elective officers, but the election to be held to be conducted under the Australian ballot system, now in force in this state, when this charter becomes effective.

Section 10. Every person residing in said city shall be entitled to vote for all officers elected under this act; but no person who is minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of this state for one year and of the city of St. Marys for sixty days, and is not a bona fide resident of the ward in which he or she offers to vote, shall be entitled to vote.

Section 11. Whenever two or more persons shall receive an equal number of votes for councilman or other officer, such tie shall be decided by the council in being.

Section 12. All contested elections shall be heard and decided by the common council for the time being; and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers; and the common council shall conduct their proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases.

Section 13. The mayor and council and all other officers provided for in this act, shall each, before entering upon the duties of their office, and within one week from the date of their election or appointment give the bond required from any officer by this charter, and take the oath prescribed by law for all officers of this state; and make oath that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices, so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths, under the law now in force, or before the mayor or recorder of said city.

Section 14. If any person elected to any office under the provisions of this act, shall not be eligible to such office under the provisions of this act, or shall fail to qualify as herein required, the council for the time being shall declare his said office vacant and shall proceed to fill the vacancy as required by this act.

Section 15. The mayor shall be chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be ex-officio a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the power and perform all the duties vested by law in a justice of the peace; except, that he shall have no jurisdiction in civil causes of action arising out of the corporate limits of the city. Any warrant or other process issued by him may be executed at any place in the county; he shall have control of the police of the city; and may suspend any policeman for cause; and he may appoint special police officers whenever he deems it necessary; and

it shall be his duty especially to see that the peace and good order of the city are preserved, and that the persons and property therein are protected; and to this end he may cause the arrest and detention of all rioters and disorderly persons in the city before issuing his warrant therefor. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in fault to the jail of the corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such cases shall not exceed thirty days. And in all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, (and in no case shall judgment for a fine of less than ten dollars be given by the mayor if the defendant, his agent or attorney object thereto) such person shall be allowed an appeal from such decision to the circuit court of said Pleasants County, and upon the execution of an appeal bond with security deemed sufficient by the mayor, in penalty double the amount of the fine and costs imposed by the mayor with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. If such appeal be taken, the warrant of arrest (if there be any), the transcript of the judgment, the appeal bond and other papers of the case, shall be forthwith delivered by the mayor to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentation, and render such judgment, including that of costs, as the law and the evidence may require; provided, that no judgment for costs shall be rendered in any such case against the city. The mayor shall from time to time, recommend to the council such measures as he may deem needful for the welfare of the city. The expenses of maintaining any person committed to the jail of the county by him, except it be to answer and indictment or be under the provision of section two hundred and twenty-seven and two hundred and twenty-eight of chapter fifty, of the amended code of this state, shall be paid by the city. But the mayor shall not receive any money belonging to the state or individuals unless he shall give the bond and security require of a justice of the peace by chapter fifty of the code; and all the provisions of said chapter relating to money received by justices shall apply as to like monies received by the mayor. The mayor shall pay all monies received by him for fines, or by virtue of his office belonging to the city, to the city collector, within one week after he received same.

Section 16. The presence of a majority of the council shall be necessary to make a quorum for the transaction of business.

Section 17. The council shall cause to be kept by the records in a well bound book to be called the "Minute Book," an accurate record of all its proceedings, ordinance, acts, orders and resolutions, and in another to be called the "Ordinance Book," an accurate copy of all general ordinances adopted by the council, both of which shall be fully indexed and open to the inspection of any one required to pay taxes to the city, or who may be otherwise interested. All oaths and bonds of officers in the city and all papers of the council shall be endorsed, filed and securely kept by the recorder. The bonds of officers shall be recorded in a well bound book to be called the "Record of Bonds." The recorder shall perform all such other duties as may by ordinance of the council be prescribed, and shall be ex-officio clerk of the police court. All printed copies of such ordinances purporting to be published under authority of the council, and transcript of such ordinances, acts, orders and resolutions, certified by the recorder, under the seal of the city, shall be deemed prima facie correct, when sought to be used in any court or before any justice.

Section 18. At each meeting of the council the proceedings of the last meeting shall be read and corrected, if erroneous, and signed by the presiding officer for the time being.

Section 19. The mayor shall have no vote on any question, except on a tie in council.

Section 20. The council shall, at the beginning of their term elect one of their members mayor pro tempore who shall be qualified to act as mayor in his absence; or in case of the death, resignation or removal of the mayor, and the said person so appointed pro tempore shall hold the office of mayor until the mayor shall have been appointed by the council to fill such vacancy for the unexpired term, and said mayor pro tempore in the absence of the mayor, shall be clothed with all power and authority conferred by this charter upon the mayor elect. In case of the absence, death or disability of the mayor, and mayor pro tempore, then council shall select a member of council to act as such.

Section 21. The meetings of the council shall be held at such place in said city, and at such times, as they shall from time to time ordain and appoint; but it shall be lawful for the council, by ordinance, to vest in any officer of said city, or in any member or number of members of their own body, the authority to call special meetings; and it shall, by ordinance, prescribe the code in which notice of such meeting shall be given; and no business shall be transacted unless a majority of all the members, of which it then consists, shall be present; except, that a less number may compel the attendance of absent members, under such reasonable penalties as they may think proper to impose, and all questions put, except in such matters as are herein provided for, shall be decided by a majority of the members present.

Section 22. The council of said city shall have power to lay off, vacate, close, open, alter, grade and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains and gutters therein, for the use of the citizens or of the public, and to improve and light the same, and to keep them free from obstruction of every kind; to regulate the width of the pavements and sidewalks, on the streets and alleys, and to order the pavements, sidewalks, footways, drains and gutters to be kept in good order, free and clean, by the owners or occupants of the real property next adjacent thereto; to establish and regulate markets, prescribe the time of holding the same, provide suitable and convenient buildings therefor, and to prevent the forestalling of such market; (to prevent injury or annoyance to the public, or the individual from anything dangerous, offensive or unwholesome); to prohibit or regulate slaughter houses, tan houses and soap factories, within the city limits, or the exercise of any unhealthful or offensive business, trade or employment; to abate all nuisances within the city limits, or to require and compel the abatement or removal thereof, at the expense of the person causing the same, or by or at the expense of the owner or occupant of the ground on which they are placed or found, subject nevertheless, to section 22-b; to cause to be filled up, raised or drained, by or at the expense of the owner, any city lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs, cattle or other animals, and fowls of all kinds, from going or being at large in such city, and as one means of prevention, to provide for impounding and confining such animals and fowls, and upon failure to reclaim for the sale thereof; to protect places of divine worship, and preserve order in and about the premises where and when such worship is held; to regulate the keeping of gun powder and other inflammable or dangerous substances, subject nevertheless to 32-a to 22-b

to provide for the regular building of houses or other structures, and for the making and maintaining of division fences by the owners of adjoining premises, and for the proper drainage of city lots or parcels of land, by or at the expense of the owner or occupant thereof; to provide against danger or damage by fire; to punish for assault and batteries; to prohibit the keeping or loitering in or visiting houses of ill-fame or loitering in saloons, or upon the streets; to prevent lewd or lascivious conduct; the sale or exhibition of indecent pictures or other representations; the desecration of the Sabbath day, profane swearing, the illegal sale of intoxicating liquors, mixtures and preparations, beer, ale, wine or drinks of like nature; to protect the persons of those residing or being within the said city; to appoint, when necessary, or advisable, a police force, permanent or temporary, to assist the chief of police in the discharge of his duties; to build or purchase; or lease and use a suitable place of imprisonment within or near said city, for the safekeeping or punishment of persons charged with or convicted of the violations of ordinances; to erect or authorize or prohibit the erection of gas, electric light or water works, within the city limits; to prevent injury of such works, or the pollution of any gas or water used or intended to be used by the public or individuals; to provide for and regulate the weighing or measuring of hay, coal, lumber and other articles sold or kept, or offered for sale, within said city, and to establish rates and charges for said weighing and measuring of hay, coal, lumber and other articles sold or kept, or offered for sale, within said city, and to regulate the running and speed of engines and cars within the said city; to create by ordinance such committees and boards, and delegate such authority thereto as may be deemed necessary or advisable; to provide for the annual assessments of the taxable property therein, including dogs kept in said city, and regulate their running at large, and to provide a revenue for the city for municipal purposes, and to appropriate such revenue to its expenses; and generally to take such measures as may be deemed necessary or advisable to protect the property, public and private, within the city; to preserve and maintain peace, quiet and good order therein, and to preserve and promote the health, safety, comfort and well being of the inhabitants thereof. The council shall have authority to pass all ordinances (not repugnant to the constitution and laws of the United States and of this state) which shall be necessary or proper to carry into full effect and power the authority, capacity and jurisdiction which is, or shall be granted or vested in the city or in the council, or in any officer or body of officers of said city, or to enforce any or all ordinances by reasonable fines and penalties, and by imprisoning the offender or offenders, and upon failure to pay any fine or penalty imposed, by compelling them to labor without compensation on any of the public works or improvements undertaken, or to be undertaken by the said city; or to labor at any work which the said city may lawfully employ labor upon, at such a rate per diem as the council may fix, but not a less rate than is fixed by said city council for like labor from other employees of said city, until any fines or penalties imposed upon any such offender or offenders by said city shall have been fully paid and discharged, after deducting charges of support while in the custody of the officers of said city; and all ordinances relating to license and sale of spiritous liquors, malt liquors, or wines, and the keeping of or loitering or dwelling in houses of ill-fame; and such police regulations as may be ordained for said city, and the right and power to enforce the same shall extend one mile, in the state of West Virginia, beyond the corporate limits of the city; provided, however, that no fine shall be imposed exceeding one hundred dollars and that no person shall be imprisoned or compelled to labor, as aforesaid, more than thirty days for any one offense. And in all cases where a fine is imposed for an amount exceeding ten dollars, or a person be imprisoned or compelled to labor as aforesaid, for a term greater than ten days, an appeal may be taken from any such decision, upon the same terms and conditions that appeals

are taken from the judgment of a justice of the state, such fines and penalties shall be imposed and recovered and such imprisonment inflicted and enforced, by and under the judgment of the mayor of the city, or in case of his absence or inability to act, by the mayor pro tempore of said city, or if he be unable to act, then a member of the council, to be appointed by the council for that purpose. In addition to the powers above enumerated, the said city council shall have power to improve, amplify, expand, and maintain the water works of said city, and to provide for an adequate supply of pure, healthful water for said city, and to do all things necessary to adequately supply said city with pure, wholesome water, and provide contract for construction and maintain an adequate sewerage system for said city, provided, however, that no license, even if permitted by the authorities of this state, shall be granted by the council for said city for sale, offer or exposing for sale of any brandy, whiskey, rum, gin, wine, porter ale, or beer or any other spiritous, vinous or malt liquors or any intoxicating liquor, drink or mixture or preparation whatever within said city or within one mile of the corporate limits thereof, and the same is absolutely prohibited.

Section 22-a. The council shall have the power by ordinance to regulate the erection of buildings with said city, grant permission therefor, and prohibit the erection of any buildings or the material to be used therein, unless the same conforms to the ordinances hereafter enacted, that will conduce to the safety of the citizens of said municipality and the adjacent property owners; but nothing herein contained shall abridge or restrict the right of any property owner, lessee or tenant thereof from using his property for any legitimate business; subject to such rules and regulations as the council may prescribe by ordinance not repugnant to the constitution of this state, nor shall the council hereafter impose any unjust or unusual restriction or requirement nor pass any ordinance or ordinances abridging the rights of property owners from exercising and carrying on any legitimate business, unless the same is a menace to public safety, or deleterious to the lives or health of the residents of said city, or which is unsanitary and offensive to the people at large; nor permit any unsanitary or defective plumbing to be done or allow any defective, insufficient or dangerous electric plumbing to be installed or placed in any buildings or building in said city by any person, firm, or corporation, unless the same is done with proper and safe material and in a mechanical manner; and said plumbing, both sanitary and electrical, shall be subject to the inspection and condemnation of any engineer appointed by the council to inspect the same; and all work, sanitary, electric or other plumbing to be under the control of the council or its engineer to be regulated by proper ordinances. And it is further provided, that said council, through its city manager or competent engineer shall, at least every three months during the year, or oftener if necessary, inspect all buildings, houses and other structures within said city, and especially all public buildings, churches, school houses, theaters and places of amusements including movies and note the kind and quality of plumbing and heating arrangements, and the manner and places of exit to all theaters and places of amusement, including movies; and in all buildings above the second story that are used by the public to have proper means of exit and fire escapes if required. And council shall have power to enforce this section by proper ordinances.

Section 22-b. Provided, however, that no ordinance shall be enacted or passed by said city council, or any action taken by it, relative to the refining, manufacturing, storing or keep in storage of petroleum, oil and its by-products, within the said city limits; nor shall there be passed or enacted by said council any ordinance commonly known as smoke ordinance in said city, nor shall said council take any action in regard thereto under this charter, but all such matters shall be solely governed and controlled by general state law now in force and in effect, or that may hereafter be enacted.

Section 23. The council of said city is further granted the authority to issue licenses within said city for any legitimate purpose or business for which a state license is issued and granted, and is permitted to charge the same license fee therefor, pursuant to the provisions of chapter thirty-two of the code of West Virginia of one thousand nine hundred and eighteen, provided, the county court of Pleasants County shall have granted the same or the clerk of the county court of said county, acting in lieu of said court, granted the same; this shall include pool rooms, bowling alleys and billiard and pool tables; and the council expressly reserves the right and power to regulate the hours at which pool rooms and bowling alleys shall be kept open and maintained, and may for cause revoke the license, and also reserves the power to itself to limit the speed and manner in which automobiles, trucks and other vehicles, are used and operated in said city, over and across its roads, streets and alleys and fix such restrictions as to speed, size, etc., of such automobiles, trucks or other vehicles as will conduce to the safety, and comfort of the citizens of said municipality and the protection of persons traveling the streets, as well as the size of the motor vehicle or other cars transporting stuff over and across the streets and alleys of said city, which are exclusively kept up and maintained by the taxes and levies within the said municipality.

Section 24. A book, well bound and indexed, to be denominated the "Docket" shall be kept in the office of the mayor, in which shall be noted each case brought before or tried by him, together with the proceedings therein, including a statement of the complaint, the summons, the return, the facts of appearance or non-appearance, the defense, the hearing, the judgment, the costs, and in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office, and the mayor shall deliver to his successors the docket and all books and papers pertaining to his office. The mayor or mayor pro tempore shall act as a police judge and try all offenders brought before him or hear and make all entries in the docket and have the same power and jurisdiction as justice of the peace, and shall enforce criminal ordinances in force, or that may be passed in pursuance to this charter, and see that the same are enforced rigidly, to the end that the peace and good order of the city is observed; and any willful neglect of duty on the part of the mayor or mayor pro tempore will render him liable to be suspended from office by the council and removed therefrom, on ten days notice upon written charges preferred against him.

Section 25. The council shall cause to be made up annually and spread upon its minute book, an accurate estimate of all sums which are, or may be, lawfully chargeable against the city, and which ought to be paid within one year; and it shall order a levy of so much as will, in its judgment, be necessary, to pay the same. Such levy shall be upon all real property and personal property subject to state and county taxes therein including a poll tax of not more than fifty cents upon each citizen resident of said corporation over twenty-one years of age; provided, that such levy shall not exceed thirty-five cents on every one hundred dollars of the ascertained value of such property. At least once in each year the council shall cause to be made up and published in one or more newspapers of the city, a statement of the revenue received from the different sources, and of the expenditures upon the different accounts for the preceding year, or portion of the year, as the case may be.

And there shall be levied a tax of one dollar on all male dogs within the corporate limits, and not to exceed five dollars on each female dog; a list of which dogs shall be furnished by the police officers to the recorder of said city, to be by him or her transmitted to the assessor of Pleasants County, not

later than the thirtieth day of June of each year; and a failure on the part of any police officer to make any such report and return, upon complaint being lodged with the council, shall be sufficient cause for his removal from office. And it is further provided that said dog tax shall be collected by the city collector and if the person owning such dog declines and refuses to pay the same, the city collector shall report the same to the police officers, whose duty it shall be to kill such dog forthwith.

Section 26. The council, upon the return of the assessor, shall cause the said assessor's books to be correctly copied by the recorder into well bound books to be provided for the purpose, and the taxes extended in each book, one of which shall be delivered to the city collector, taking his receipt therefor, as well as for the taxes therein contained.

Section 27. Annual levy by municipal council. At its session held on the second Tuesday, in August, as aforesaid, the common council of every municipal corporation shall ascertain the condition of the fiscal affairs thereof, and make up an itemized statement of the same, which shall set forth in detail:

(a) The amount due the municipality, and the amount that will become due thereto and collectable during the current fiscal year, from every source, but excepting the amount that will be produced by levy of taxes to be made for the year.

(b) The debts and demands owned by the municipality, and the debts and demands that will become due and payable during the current fiscal year, including interest on any indebtedness, funded or bonded or otherwise.

(c) All other expenditures, under the several heads of expenditures, to be made and payable out of the funds of the municipality for the current fiscal year, including the cost of collecting of taxes and other claims, with proper allowances for delinquent taxes and contingencies. Said statement shall also set forth the total amount necessary to be raised by the levy of taxes for the current fiscal year; and the proposed rate of levy of taxes on the property of the municipality; and also the aggregate of the property of the municipality; also the aggregate of the taxable property in the municipality, stating separately the amount of personal property, of real estate, and the property assessed by the board of public works. A copy of such statement duly certified by the clerk, recorder or other recording officer of such municipality, shall be published as provided in sections one and two of chapter twenty-eight-a, Barnes Code, of West Virginia, one thousand nine hundred and sixteen; and posted at each voting place in the municipality at least eight days before an adjourned meeting of the common council to be held on the fourth Tuesday in August; at which time the council shall reconvene and proceed in all respects as provided in sections one and two, chapter twenty-eight-a, Barnes Code, West Virginia, 1916. After having entered the said statement, as finally approved, in its book of record of proceedings, the council shall thereupon levy as many cents on each one hundred dollars of the assessed valuation of the property of the municipality, according to the last assessment thereof, as will produce the amount shown by the said statement necessary to be raised for municipal purposes during the fiscal year; provided, that such levy shall not exceed thirty-five cents on each one hundred dollars of said valuation for any year, anything in this charter to the contrary, notwithstanding.

Section 28. And the council of said city is hereby empowered and authorized at any time that the necessity thereunder arises, or the condition of the

municipal affairs are such that a special levy should be required for any purposes, the power is hereby granted to the said council of the said city of St. Marys, to make such further or additional levies in the manner prescribed by sections five, six, seven and eight of chapter twenty-eight-a, of the code of West Virginia, one thousand nine hundred and sixteen; and said sections five, six, seven and eight are made part and parcel of this charter and held and treated the same as if fully copied herein, and the council of said city is hereby empowered and authorized at any time that the legislature of West Virginia shall amend or change said sections five, six, seven and eight of chapter twenty-eight-a, to make such amendments conformable to this charter.

Section 29. And section nine of chapter, twenty-eight-a, Barnes Code of West Virginia, one thousand nine hundred and sixteen concerning unlawful expenditures, indebtedness and liability, is made a part and parcel of this chapter.

Section 30. There shall be a lien on personal property and real estate within said city or the city taxes assessed thereon, and for all fines and penalties assessed or imposed upon the owners thereof by the authorities of such city from the time the same are so assessed or imposed, which shall have priority over all other liens, except the lien for taxes due the state and county; and which may be enforced by the council in the same manner provided by law for the enforcement of the lien for county taxes. If any real estate within said city be returned delinquent for the non-payment of taxes due thereon, a copy of such delinquent list may be certified by the council to the auditor, and the same may be sold for city taxes, interest and commissions thereon, in the same manner, at the same time and by the same officers as real estate is sold for state taxes.

Section 31. It shall be the duty of the council of said city, to at the first regular meeting in such year, appoint three persons, residents of said city, to act in the capacity of trustees of the sinking fund accrued from any and all special levies made and collected, for the purpose of paying the interest and principal upon the bonded indebtedness of said city; and it shall be the duty of said trustees to take charge of and invest said sinking fund in safe securities at their discretion and such manner as to yield to the said City of St. Marys the best interest thereon that said trustees for the benefit of said city, and paid over by them at the time of making their settlement to such person or persons as the council may direct before entering upon their duties as trustees of said sinking fund, said three trustees so appointed shall execute and file with the recorder of said city, a bond in a sum to be fixed by the council, sufficient to cover and secure all monies coming into their hands by reason of their said office; which bond shall be executed by them, together with good personal security to be approved by the council. Said trustees of the sinking fund shall, make and file with the council a full and complete statement once each year, or as often as the council may deem necessary and require, and said trustees shall make a full and complete settlement and pay over all monies in their hands as such trustees, whenever required by the council so to do.

Section 32. All bonds, obligations or other writings, taken in pursuance of any provision of this act, shall be made payable to "The City of St. Marys", and the respective person and their heirs, executors, administrators and assigns bound thereby, shall be subject to the same proceedings on the said bond, obligation and other writing, for enforcing the condition of the terms thereof, by motion or otherwise, before any court of competent jurisdiction in any for the county of Pleasants, that collectors of county levies and other sureties are, or shall be subject to, on their bonds for enforcing the payment of the county levies.

Section 33. The council shall have the right to institute proceedings in the same name of the city, for the condemnation of real estate for streets, alleys, drains, market grounds, city prisons or other work or purpose of public utility. Such proceedings shall conform to the provisions of chapter forty-two of the code of West Virginia, and the expense thereof shall be borne by the city.

Section 34. All acts or parts of acts, inconsistent with this act, are hereby repealed; but this act shall not be construed to repeal, change or modify any previous act consistent with this act, authorizing the town of St. Marys to contract debts or to borrow money, or to take away any of the powers conferred upon said town of St. Marys, or upon the mayor or council, or any of the officers, conferred by general law, except so far as the same are consistent with the powers hereby conferred; and the city of St. Marys, hereby created, shall be held in all things to be legal successor to the town of St. Marys, heretofore existing, and all legal obligations of said town shall be valid and binding upon the city of St. Marys.

Section 35. It is made part and parcel of this charter that all indebtedness heretofore contracted either by bond issue or issues, or the issue of orders, or evidence of indebtedness of any kind against the city of St. Marys, or the former town of St. Marys, shall on no wise be effected by the adoption of this charter; but the city council is authorized and empowered, and it is made a condition precedent that said municipality shall provide for and take care of said indebtedness in the manner provided by law, and said city through its municipal authorities are authorized and empowered by proper ordinances entered of record and election held therefor, if necessary, and ratified by a three-fifths of the voters of said municipality, at an election to be held for that purpose, to fund its bonded and other indebtedness at a rate of interest, not exceeding six per cent, to run for a period of not longer than thirty-four years, and said council is given the right and privilege hereunder of all powers conferred to cities and towns in this state by chapter forty-seven of Barnes Code of West Virginia, one thousand nine hundred and sixteen, governing cities and towns; and especially that part of said chapter, sections forty-nine-b one, forty-nine-b-two, forty-nine-b-three, forty-nine-b-four, forty-nine-b-five, forty-nine-b-six, forty-nine-b-seven, forty-nine-b-eight, forty-nine-b-nine, forty-nine-b-ten, forty-nine-b-eleven.

A. - Also, forty-nine-one-c, forty-nine-two-c, forty-nine-three-c, forty-nine-four-c, down to and including forty-nine-o.

Which act of said code of one thousand nine hundred and sixteen, chapter forty-seven, aforesaid, are made a part and parcel of the organic law of this city.

Section 36. It is hereby expressly provided that immediately after the passage of this act and the approval by the governor of this state, or its approval, by reason of his failure to sign the same, the present council and municipality of the city of St. Marys in being, shall cause a charter election to be held at three public places in the wards designated herein, numbers one, two and three, at such time and place and on a day to be named therein, under the general rules and regulations for the governing and controlling of general elections in this state and which election shall be held after two weeks notice is given of the time and place of said election and the ballots shall have printed thereon, "For the amended charter of the city of St. Marys", and "Against the amended charter of the city of St. Marys". And if, on the vote being canvassed and certified, within five days thereafter, a majority of all

the voters shall have voted in the affirmative, then said charter, so amended, shall from thence on be in full force and effect, and shall be the organic law governing said municipality, but if a majority of the votes cast at said election are found to be against said ratification, then said proposed charter will not have been adopted and the present charter now in being will continue in force and effect as it now is.

Section 37. In case said charter is adopted, at said charter election, held as aforesaid, then all acts and parts of acts inconsistent with this proposed charter, shall be deemed to have been repealed, and are, hereby repealed.

Section 38. The mayor and council in being and all elective officers of the city of St. Marys, in office at the time of the passage of this act, shall hold their respective offices and exercise all the powers and discharge all the duties thereof until their successors are elected and qualified; and shall exercise the powers, perform the duties, and receive the compensation heretofore conferred, prescribed and allowed by the form charter, by general law or by the ordinances of the said town, while they remain in office under the provisions of this act.

All ordinances in force in the city of St. Marys, at the time of the passage of this charter and the taking effect of the same, shall continue to have full operation and effect as ordinances of the city of St. Marys until amended, repealed, or suspended by the council of said city, except such thereof as are inconsistent with the provisions of this act.

Section 39. The said city council shall have full power and authority to change and enlarge the corporate limits of said city in manner and in form, and under the provisions provided by section forty-eight and forty-nine chapter forty-seven of the Barnes Code of West Virginia, edition of 1916.

AN ORDINANCE PROVIDING FOR AMENDMENT  
OF SECTIONS 4, 8, 9, and 10 OF THE  
CITY CHARTER OF ST. MARYS AND CALLING  
AN ELECTION FOR SUCH PURPOSE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ST. MARYS

That Section 4 of the City Charter of the City of St. Marys, West Virginia, be amended by deleting the second sentence of Section 4 and inserting in lieu thereof, the following:

Section 4. The Mayor shall be elected for the term of four years; and all councilmen, after the first election, shall be elected for the term of four years.

That Section 4 of the City Charter be amended by adding to the fourth sentence of Section 4 the following:

Section 4. and all must be bona fide residents of said City for at least one year preceding the time of their election.

That Section 8 of the City Charter be amended by deleting all of Section 8 and inserting in lieu thereof, the following:

Section 8. Candidates to be voted for at any general municipal election in the City of St. Marys, at which a Mayor and three councilmen are to be elected under the provisions hereof, shall be named at a primary election, and the two candidates receiving the highest number of votes for Mayor are to be the candidates and the only candidates to be voted upon at the General Election. The two candidates in each ward receiving the highest number of votes at said Primary Election are to be the candidates and the only candidates to be voted upon at the General Election. The Primary Election shall be held on the second Tuesday in May, One Thousand Nine Hundred and Sixty-Nine, and thereafter every two years. The General Election shall be held on the second Tuesday in June, One Thousand Nine Hundred and Sixty-Nine, and thereafter every two years. The terms of all officers so elected on the second Tuesday in June shall be on the first day of July following their election, and they shall hold the same until their successors are elected and qualified according to law.

That Section 9 of said Charter be amended by deleting all of Section 9 and inserting in lieu thereof, the following:

Section 9. Any person desiring to become a candidate for Mayor or Councilman shall, on or before the 15th day of April prior to the Primary Election, file with the City Recorder a statement of said candidacy, with a filing fee charge of Five Dollars (\$5.00).

That Section 10 of said Charter be amended by deleting the language "sixty days" from the fifth line thereof and inserting in lieu thereof the language "One Year".

**AN ORDINANCE CHANGING THE CHARTER OF  
THE CITY OF ST. MARYS AND APPOINTING  
A "POLICE COURT JUDGE", THE FIXING HIS  
COMPENSATION AND DUTIES FOR SAID CITY.**

WHEREAS, the Charter of the City of St. Marys, West Virginia, provides in Section 15 of said Charter as follows:

The mayor shall be chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be ex-officio a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the power and perform all the duties vested by law in a justice of the peace; except, that he shall have no jurisdiction in civil causes of action arising out of the corporate limits of the city. Any warrant or other process issued by him may be executed any place in the county. He shall have control of the police of the city; and may suspend any policeman for cause; and he may appoint special police officers whenever he deems it necessary; and it shall be his duty especially to see that the peace and good order of the city are preserved, and that the persons and property therein are protected; and to this end he may cause the arrest and detention of all rioters and disorderly persons in the city before issuing his warrant therefor.

He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of the corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such cases shall not exceed thirty days. And in all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, (and in no case shall judgment for a fine of less than ten dollars be given by the mayor if the defendant, his agent or attorney object thereto) such person shall be allowed an appeal from such decision to the Circuit Court of said Pleasants County, and upon the execution of an appeal bond with security deemed sufficient by the mayor, in penalty double the amount of the fine and costs imposed by the mayor with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the Circuit Court on such appeal. If such appeal be taken, the warrant of arrest (if there be any), the transcript of the judgment, the appeal bond and other papers of the case, shall be forthwith delivered by the mayor to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentation, and render such judgment, including that of costs, as the law and the evidence may require; provided, that no judgment for costs shall be rendered in any such case against the City.

The mayor shall from time to time, recommend to the council such measures as he may deem needful for the welfare of the City. The expenses of maintaining any person committed to the jail of the county by him, except it be to answer an indictment or be under the provision of section two hundred and twenty-seven and two hundred and twenty-eight of chapter

fifty, of the amended code of this state, shall be paid by the City. But the mayor shall not receive any money belonging to the state or individuals unless he shall give the bond and security required by chapter fifty of the code of a justice of the peace; and all the provisions of said chapter relating to money received by justices shall apply as to like moneys received by the mayor. The mayor shall pay all moneys received by him for fines, or by virtue of his office belonging to the City, to the city collector, within one week after he received same.

WHEREAS, said charter provisions as relating to the powers and duties of Police Judge for said City are in conflict with and have been changed by Chapter 8, Article 10, Section 2, of the Code of West Virginia, and

WHEREAS, it is the desire of Council to adopt the provisions of Chapter 8, Article 10, Section 2 of the Code of West Virginia, to the extent hereinafter set forth and thereby to amend Section 15 of the Charter of said City of St. Marys.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, That the provisions in conformity with Chapter 8, Article 10, Section 2, of the Code of West Virginia, be adopted and made a part of the Charter of this municipality as follows:

**Section 15. Duties and Power of Mayor.**

The mayor shall be chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall have control of the police of the city; and may suspend any policeman for cause; and he may appoint special police officers whenever he deems it necessary; and it shall be his duty especially to see that the peace and good order of the city are preserved, and that the persons and property therein are protected. The mayor shall from time to time, recommend to the council such measures as he may deem needful for the welfare of the City.

**Section 15(a). Appointment of Police Court Judge;  
Duties Generally.**

The municipality of St. Marys, West Virginia, having a population in excess of two thousand (2,000) people, does hereby provide for the appointment by the Common Council by a majority thereof, an Officer or person to be known as "Police Court Judge", who shall be a person of good moral character and reputation, a law abiding citizen, a person who has not been convicted of a

felony or of any scandalous crime and a resident and freeholder of the municipality for at least one year preceding the time of his appointment, and his compensation shall be determined in the same manner as all appointed officials of the municipality, and the duties of such Police Court Judge are as hereinafter set forth:

The Police Court Judge shall be ex-officio a justice and conservator of the peace within the city, and shall, within the same, have and exercise all of the powers, both civil and criminal, and perform all duties vested by law in a justice of the peace or magistrate, except that he shall have no jurisdiction in civil cases or causes of action arising out of the corporate limits of the city. He shall have the same power to issue attachments in civil suits as a justice or magistrate of his county has, though the cause of action arose out of his city. However, in such case he shall have no power to try the same but such attachments shall be returnable and be heard before some justice or magistrate of his county. Upon complaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the Chief of Police or any member of the police department of the city, and the same may be executed at any place within the county or counties in which the city is situated; and it shall be his duty especially to see that the peace and good order of the town are preserved, and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly persons in the city before issuing his warrant therefor. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county or counties in which such city is situated, or other place of imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such case shall not exceed thirty days. In all cases where a person is sentenced to imprisonment or to the payment of a fine of Ten Dollars or more, and in no case shall a judgment for a fine of less than Ten Dollars be given by the Police Court Judge if the defendant, his agent or attorney object thereto, such person shall be allowed an appeal from such decision to the Circuit Court of Pleasants County, West Virginia, and upon the execution of an appeal bond with security deemed sufficient by the Police Court Judge, in penalty double the amount of the fine and costs imposed by the Police Court Judge with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the Circuit Court on such appeal. If such appeal be taken, the warrant of arrest (if there be any), the transcript of the judgment, the appeal bond and other papers of the case, shall be forthwith delivered by the Police Court Judge to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentation, and render such judgment, including that of costs, as the law and the evidence may require; provided, that no judgment for costs shall be rendered in any such case against the City.

When the penalty authorized by law is a fine exceeding Five Dollars, or imprisonment, the accused shall be entitled to a trial by twelve jurors, or a less number, if demanded, under the regulations respecting such trials in civil suits before justices or magistrates, as provided under the provisions of Chapter 50 of the Code of West Virginia. He shall from time to time, recommend to the Council such measures as he may deem needful for the welfare of the city. The expense of maintaining any person committed to the jail of the county by him, except it be to answer an indictment, or be under the provisions of Section 8 and 9, Article 18, Chapter 50 of the Code of West Virginia, shall be paid by the City and taxed as part of the costs of the proceeding. But such Police Court Judge shall not receive any money belonging to the State or to individuals unless he shall give bond and security required of a justice of the peace or magistrate as set forth in Chapter 50, Article 1 of the Code of West Virginia; and all the provisions of Article 1, Chapter 50 relating to moneys received by justices or magistrates shall apply to like moneys received by such Police Court Judge. The Police Court Judge shall pay all moneys received by him for fines, or by virtue of his office belonging to the City, to the city collector, within one week after he received same. Such Police Court Judge shall have all the similar powers and duties enumerated in the respective applicable charter provisions of the Code of West Virginia.

You are further notified that on the 17th day of April, 1976, one written objection was filed to object to the adoption of the proposed amendments. You are further advised that on the 27th day of April, 1976, the Council of the City of St. Marys unanimously approved the proposed amendments and agreed to submit the proposed amendments to the voters for ratification or rejection at a special election to be held on the 11th day of May, 1976, between the hours of 6:30 a.m. and 7:30 p.m. o'clock.

This notice is given in compliance with Chapter 8, Article 4, Section 8 of the West Virginia Code.

That notice calling such election shall be given by publication of this ordinance at least once each week for two successive weeks before said election in the Pleasants County Leader and the St. Marys Oracle, two newspapers of opposite politics, and of general circulation, published in said municipality. Attested copies of this ordinance shall also be posted at each place of voting at least ten (10) days before said election. All provisions of law concerning general elections shall apply so far as they are practicable.

It is further ordered that the voting places for said election shall be as follows:

First Ward	Court House
Second Ward	The St. Marys Grade School
Third Ward	The High School Building

It is further directed that the persons who are hereafter designated as election officials who are to hold and conduct the primary election to be held on Tuesday, May 11, 1976, are also designated as election officials to hold and conduct the aforesaid special City Election and will perform the duties in such dual capacities.

It is further ordered that the recorder of the City do procure and furnish the necessary supplies for the holding of said special election at the aforesaid voting precincts in accordance with law; that he do cause to be posted at each said voting places an attested copy of this order at least ten days before said special election; that he do notify the aforementioned Commissioners and Clerks of their appointments as election officials for such special election.

That the ballot to be used at such election shall be in form as follows:

OFFICIAL BALLOT

Special election to authorize change to the Charter of the City of St. Marys, West Virginia, establishing a municipal police court judge, according to the order of Council of the City of St. Marys, West Virginia, entered on the 27th day of April, 1976.

- ( ) FOR THE CHARTER CHANGE ESTABLISHING  
A MUNICIPAL POLICE COURT JUDGE
- ( ) AGAINST THE CHARTER CHANGE ESTABLISHING  
A MUNICIPAL POLICE COURT JUDGE

INSTRUCTIONS: Those favoring a Charter change will place an (x) in the square "For the Charter Change Establishing a Municipal Police Court Judge"; those against the charter change will place an (x) in the square "Against the Charter Change Establishing a Municipal Police Court Judge".

AN ORDINANCE ESTABLISHING A MUNICIPAL  
COURT AND PROVIDING FOR A MUNICIPAL POLICE  
COURT JUDGE: POWERS AND DUTIES GENERALLY; APPEAL.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ST. MARYS,  
in the County of Pleasants and State of West Virginia, in regular session  
assembled this 6th day of July, 1976, THAT

Section 1. Municipal Court.

There is hereby created a municipal court for the City of St. Marys, which shall be presided over by a municipal police court judge.

Section 2. Municipal Police Court Judge, Appointment, Qualification, Compensation, Oath and Bond.

There shall be a municipal police court judge who shall be appointed by the Council, who shall hold his office at the pleasure of the Council, and who shall receive such compensation as may be fixed by Council. The person so appointed as municipal police court judge shall be a person of good moral character and reputation, a law abiding citizen, a person who has not been convicted of a felony or of any scandalous crime and a resident of and freeholder of the municipality for at least one (1) year next preceding the time of his appointment. The person so appointed as municipal police court judge shall qualify by taking the oath of office as such and shall give bond in the amount fixed by Council, under which bond he shall be responsible for all funds coming into his hands by virtue of such appointment.

Section 3. Powers and Duties of Municipal Police Court Judge.

The municipal police court judge shall be a conservator of the peace within the City, and insofar as any ordinance of the City is concerned, shall have and exercise all such powers and duties in criminal cases as a magistrate may lawfully exercise under the statutes of the State, and he shall also be ex-officio a magistrate within the City, and shall, within said City, have and exercise all of the criminal powers and perform all duties fixed by law in a magistrate, except that he shall have no jurisdiction in civil cases, and shall have such further powers and perform such other duties as may be from time to time prescribed or conferred by any law of the State or by ordinance of the City of St. Marys.

Section 4. Docket, Disposition of Fees, Fines and Costs.

There shall be a docket of the municipal court and it shall be the duty of the municipal police court judge to docket fully thereon all cases in the court, and show thereon all fees, fines, and costs adjudged and collected. The municipal police court judge shall, at least once a month, make a written report to the City Clerk of the City showing all receipts for the previous month and shall pay over and deliver to said City Clerk all such monies so received and to which the City is entitled, which monies shall be deposited in the City General Fund. Each such report shall be presented to the County at its next regular meeting.

Section 5. Costs.

The City shall be entitled to, and the municipal police court judge may tax, in all cases appearing before him involving violations of City ordinances, the same costs and in the same amounts as a magistrate may tax.

Section 6. Issuance of Search Warrants, Direction and Service of Process.

Upon complaint, the municipal police court judge shall have authority to issue a search warrant in connection with the violation of any provision of state law or ordinance of the City. Any search warrant, warrant of arrest or other process issued by the municipal police court judge may be directed to the Chief of Police or any member of the police department of the City and may be executed at any place within the county.

Section 7. Appeal.

Every person sentenced by the municipal police court judge of the municipal court to imprisonment or to the payment of a fine of Ten Dollars (\$10.00) or more, and in no case shall a fine of less than Ten Dollars (\$10.00) be imposed if the defendant, his agent or attorney objects thereto, shall be allowed an appeal to the Circuit Court of Pleasants County; the procedure upon appeal from the municipal court shall be the same as an appeal from a magistrate's court.

Section 8. Acting Municipal Police Court Judge.

In the event of the temporary absence of the municipal police court judge from his duties, the Mayor shall appoint a person similarly qualified to serve as municipal police court judge during such absence without the necessity of Council approval. The compensation of the temporary police court judge shall be determined by council.

Section 9.

Should any part of this Ordinance be declared invalid, it shall not affect the remainder of this Ordinance.

Section 10.

This Ordinance shall take effect on the 6th day of July, 1976.

AN ORDINANCE CHANGING THE CHARTER OF  
THE CITY OF ST. MARYS AND CREATING  
NEW BOUNDARIES FOR THE FIRST,  
SECOND AND THIRD WARDS

WHEREAS, the Charter of the City of St. Marys, West  
Virginia, provides in Section 3 of said Charter as follows:

Section 3. The territory of said city is  
hereby divided into three wards, each of which is  
bounded and described as follows:

First Ward: All that part of the territory above  
described lying south of a line running from the  
thoroughfare with the center of Washington Street to  
the east line of said corporation line near what is  
known as the Horseshoe Bend, shall constitute the  
first ward.

Second Ward: All that part of said territory above  
described, included between the center of Washington  
Street and Sycamore Street of said city and  
extending from the thoroughfare and corporation line  
on the west to the east line of said corporation  
shall be and constitute the second ward.

Third Ward: All of the remainder of said territory  
lying north and east of the said Sycamore Street and  
up to Middle Island Creek, beginning with the line  
of said corporation at a point of intersection of  
said second ward, with the eastern and northern  
boundary thereof, and binding thereon with the line  
of said corporation back to its intersection at the  
end of said second ward, shall be and constitute the  
third ward of said city. Said three wards so formed  
as aforesaid, to be and remain as constituted and  
laid down until changed by the municipal authorities  
of said city as provided by law.

WHEREAS, said Charter provisions as relating to the  
boundaries of the said wards have resulted in great disparity in  
the size of population of each ward;

WHEREAS, it is the desire of Council to create new

*W. Diane  
12-79*

boundaries for such wards in order to make the population of each Ward more equal;

WHEREAS, a Notice was published in the St. Marys Oracle and the Pleasants County Leader giving the voters of the City of St. Marys until April 1, 1986, to file objection to the proposed Ordinance;

AND WHEREAS, no objections were filed to the proposed Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, That the following be adopted and made a part of the Charter of this municipality:

Section 3. The territory of said city is hereby divided into three wards, each of which is bounded and described as follows:

First Ward: All that part of the City of St. Marys lying south of a line running from the thoroughfare with the center of Gallaher Street to the east line of said corporation line shall constitute the first ward.

Second Ward: All that part of the City of St. Marys north of the center of Gallaher Street to a line running along the center of Charles Street; thence north along the center of Elaine Street to the northern boundary of Oakwood Terrace Addition and running along the northern boundary of lots No. 64, 70, 75, 76, 84 and 90 of said Oakwood Terrace Addition as shown on that certain plat of record in the Office of the Clerk of the County Commission of Pleasants County, West Virginia, in Plat Book No. 1, at page 158, shall constitute the second ward.

Third Ward: All of the remainder of the City of St. Marys lying north of a line running along the center of Charles Street; thence north along the center of Elaine Street to the northern boundary of the Oakwood Terrace Addition to the City of St. Marys; thence along the northern boundary of Lots No. 64,

70, 75, 76, 84 and 90 of said Oakwood Terrace Addition shall constitute the third ward.

Said three wards as so formed shall remain as constituted and laid down until changed by the municipal authorities of said City as provided by law.



Arthur G. Olds, Mayor

First Reading: April 1, 1986

Second Reading: April 15, 1986

AN ORDINANCE TO AMEND SECTIONS 8 AND 9 OF THE CITY OF ST. MARYS CHARTER IN MANNER FOLLOWING, TO-WIT: TO AMEND SAID SECTION 8 SO AS TO ABOLISH THE MUNICIPAL PRIMARY ELECTION HELD ON THE SECOND TUESDAY IN MAY IMMEDIATELY PRECEDING EACH GENERAL MUNICIPAL ELECTION, AND TO PROVIDE FOR A REGULAR MUNICIPAL ELECTION TO BE HELD ON THE SECOND TUESDAY IN JUNE, 1989, AND BIENNIALLY THEREAFTER ON THE SECOND TUESDAY IN JUNE, TO PROVIDE THAT THE ELECTION OF MAYOR AND COUNCILMAN SHALL BE OF NONPARTISAN NATURE, THAT NO DECLARATION OF POLITICAL AFFILIATION SHALL BE REQUIRED FROM ANY CANDIDATE FOR THE MUNICIPAL ELECTIVE OFFICES OF MAYOR AND COUNCILMAN ANTECEDENT TO HIS OR HER CANDIDACY THEREFOR, TO PROVIDE FOR THE ELECTION OF THAT CANDIDATE RECEIVING THE HIGHEST NUMBER OF VOTES CAST FOR A PARTICULAR OFFICE, TO PROVIDE FOR THE TERMS OF OFFICE AND TO PROVIDE FOR THE CONDUCT OF SUCH ELECTIONS IN MANNER SUCH AS ARE CONDUCTED GENERAL NONPARTISAN ELECTIONS IN THE STATE OF WEST VIRGINIA; TO PROVIDE FOR THE AMENDMENT OF SAID SECTION 9 SO AS TO PROVIDE FOR THE FILING OF A CERTIFICATE OF ANNOUNCEMENT OF CANDIDACY FOR ELECTIVE OFFICE, IN MANNER AND FORM AS SET FORTH, WITH THE RECORDER AND THE PAYMENT OF A FILING FEE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA:

That Section 8 of The City of St. Marys Charter be amended by deleting all of Section 8 and inserting in lieu thereof, the following, to-wit:

Section 8. a) The regular municipal election to be held in the year one thousand nine hundred eighty-nine (1989), and biennially thereafter shall be held on the second Tuesday in June, but upon a nonpartisan ballot printed for the purpose. In the regular municipal election to be held on the 2nd Tuesday in June, 1989, and biennially thereafter, the candidate for any municipal elective office who has filed his candidacy therefore in accordance with Section 9 hereof, and who shall have received the highest number of votes cast for such office, shall be, and shall be declared to be, elected to such office.

b) It is declared to be the intent hereof that any person declared to be elected shall take office, even though he or she or they may not have received a majority or plurality of all votes cast for such office at such election.

c) The terms of all officers so elected on the second Tuesday in June shall commence on the first day of July following their election, and they shall hold the same until

cc: W. D. D. 11

their successors are elected and qualified according to law.

d) Regular municipal elections shall be held on the second Tuesday in June of alternate years commencing as hereinabove provided and conducted in all respects as provided by law for conducting general nonpartisan elections in the State of West Virginia. The Common Council shall perform all of the duties in regard to the election which are imposed upon a county commission in conducting a general election in the State, and the Recorder shall perform all of the duties which are imposed upon the clerks of the circuit and county commission. The Common Council, in selecting officers to conduct the election and in choosing ballot commissioners, shall be bound by all of the laws obligating a county commission to select commissioners and clerks.

e) The ballots at regular municipal elections shall be received, cast, counted, tabulated and returns made and canvassed in all respects as provided by law for conducting general nonpartisan elections in the State of West Virginia, except that the duties devolving upon the county commission and the clerk thereof under the general laws for conducting elections in the State shall be discharged by the Common Council and Recorder.

That Section 9 of the City of St. Marys Charter be amended by deleting all of Section 9 and inserting in lieu thereof, the following, to-wit:

Section 9. a) Any person who is a resident of The City of St. Marys and who is otherwise eligible to hold the office of Mayor or Councilman, and who seeks to be elected to any such office, shall, if such person desires his or her name to appear on the ballot, file a Certificate of Announcement with the Recorder of said City, delcaring himself or herself a candidate for election to such office. Such certificate shall be substantially in the form: I, ....., hereby certify that I am a candidate for the office of ....., and desire my name printed on the ballot to be voted at the regular municipal election to be held on the .....day of....., 19.....; that I am a qualified voter of The City of St. Marys; that the address of my residence in The City of St. Marys is .....; that I am eligible to hold the office; and that I am a candidate therefor in good faith.

ANT & WHITE  
ORNEYS AT LAW  
ASHINGTON STREET  
O. BOX 178  
RYS, WY 26170-0178  
304-864-2218

\_\_\_\_\_  
Candidate  
2

Signed and acknowledged before me this .....day of  
....., 19.....

\_\_\_\_\_  
Signature and Official Title of  
Certifying Officer

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

b) In the year one thousand nine hundred eighty-nine (1989), and biennially thereafter, such certificate shall be filed with the Recorder not earlier than the last Monday in February next preceding the regular municipal election and not later than the last Friday in March next preceding the regular municipal election and must be received by the Recorder before midnight, eastern standard time, of that day, or, if mailed, shall be postmarked before that hour.

c) Every person who becomes a candidate for municipal office in any such regular municipal election shall, at the time of filing his Certificate of Announcement, pay a filing fee in the sum of Twenty and No/100 Dollars (\$20.00) for the office of Mayor and the sum of Five and No/100 Dollars (\$5.00) for the office of Councilman.

THE CITY OF ST. MARYS

By: \_\_\_\_\_

Its Mayor

Attest:

\_\_\_\_\_  
Recorder

First Reading June 7, 1988

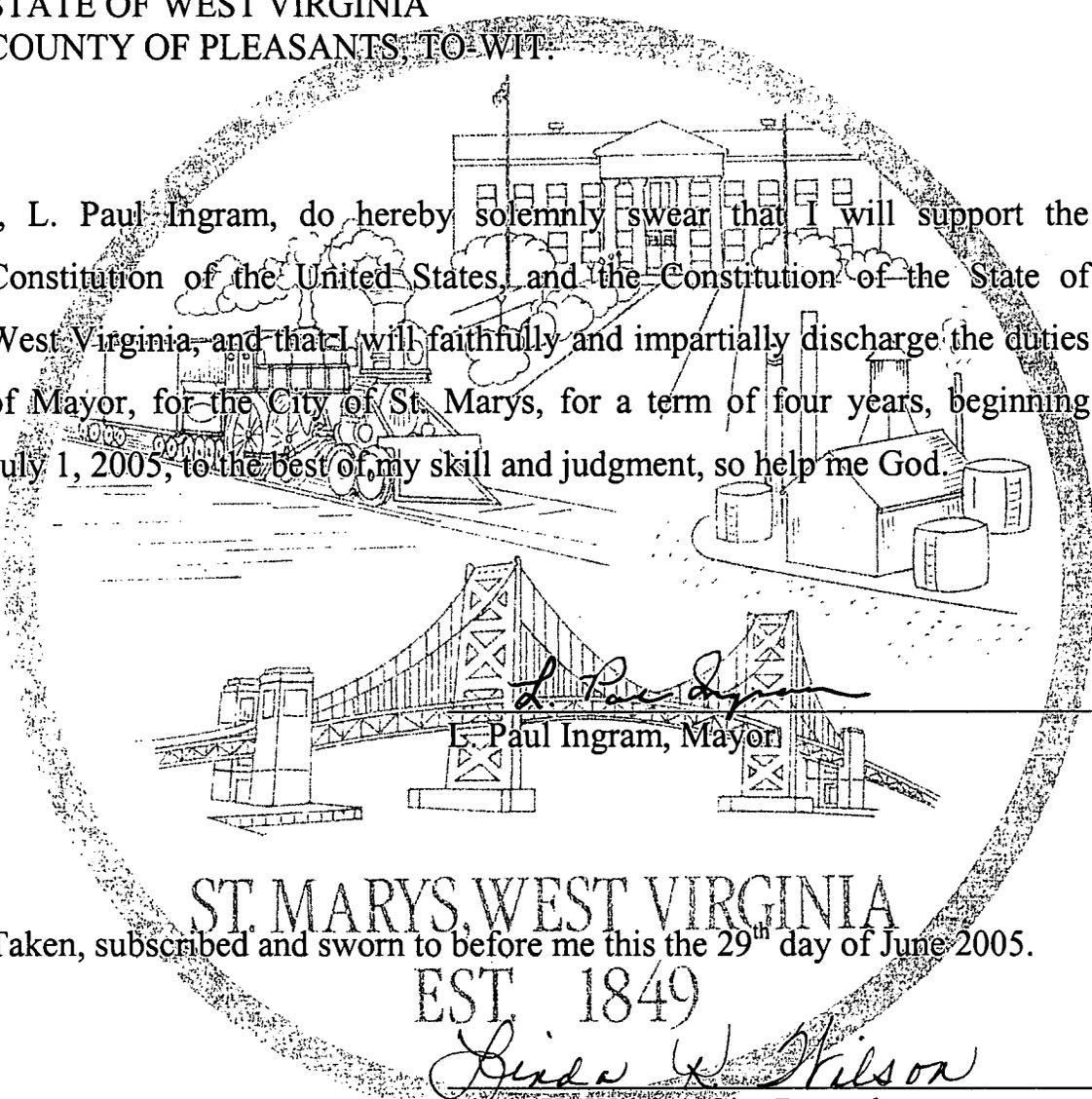
Second Reading June 21, 1988

RYANT & WHITE  
ATTORNEYS AT LAW  
WASHINGTON STREET  
P. O. BOX 176  
MARYS, WV 26170-0176  
304-884-3218

# City of St. Marys

418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:



I, L. Paul Ingram, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Mayor, for the City of St. Marys, for a term of four years, beginning July 1, 2005, to the best of my skill and judgment, so help me God.

*L. Paul Ingram*  
L. Paul Ingram, Mayor

ST. MARYS, WEST VIRGINIA

Taken, subscribed and sworn to before me this the 29<sup>th</sup> day of June 2005.

EST. 1849

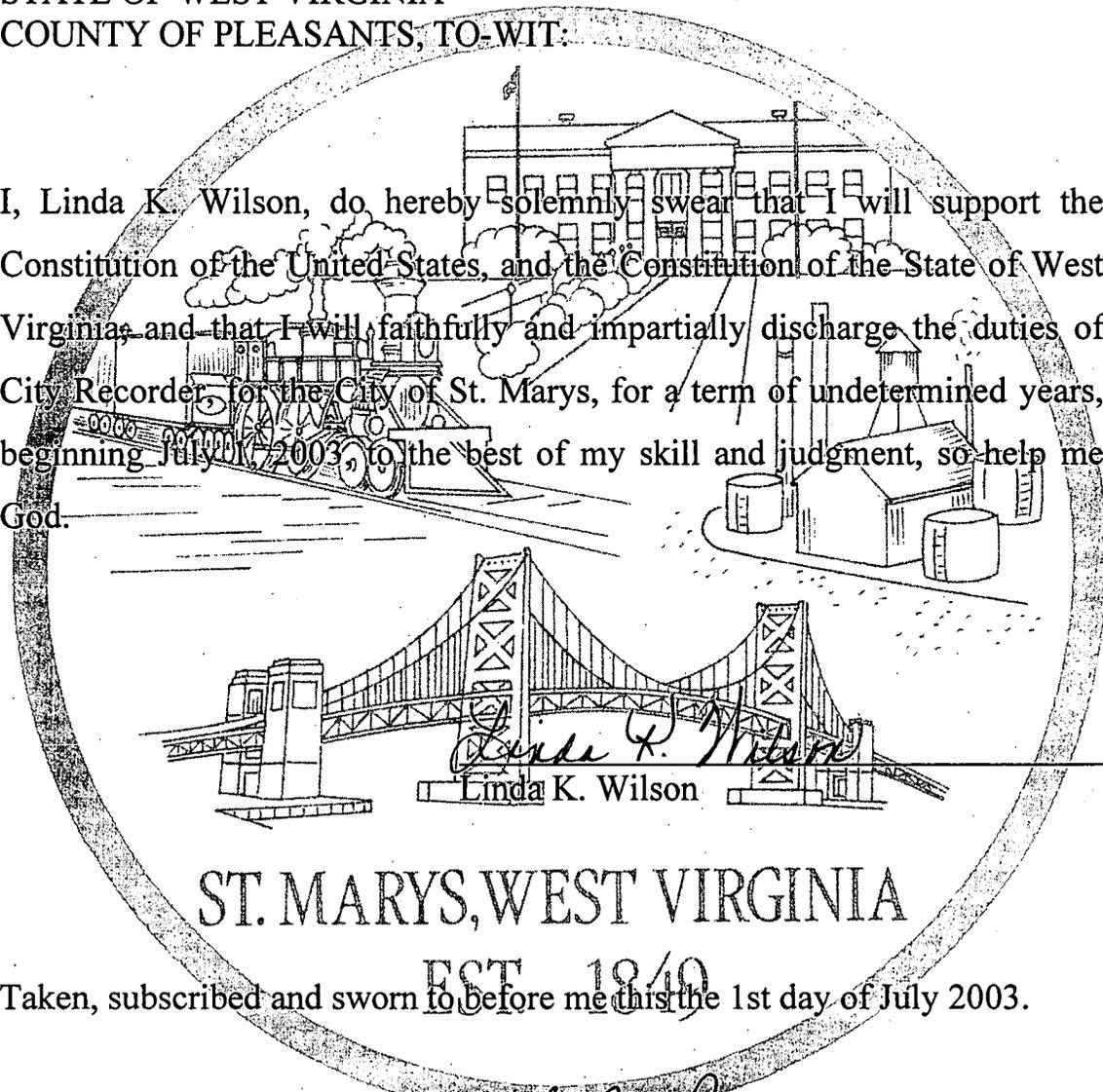
*Linda K. Wilson*  
Linda K. Wilson, City Recorder

# City of St. Marys

418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, Linda K. Wilson, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of City Recorder for the City of St. Marys, for a term of undetermined years, beginning July 1, 2003, to the best of my skill and judgment, so help me God.



*Linda K. Wilson*  
Linda K. Wilson

ST. MARYS, WEST VIRGINIA

EST. 1849

Taken, subscribed and sworn to before me this 1st day of July 2003.

*L. Paul Ingram*  
L. Paul Ingram, Mayor

# City of St. Marys

418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, Rick McCullough, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward III Councilperson, for the City of St. Marys, for a term of four years, beginning July 1, 2005, to the best of my skill and judgment, so help me God.



ST. MARYS, WEST VIRGINIA

EST. 1840

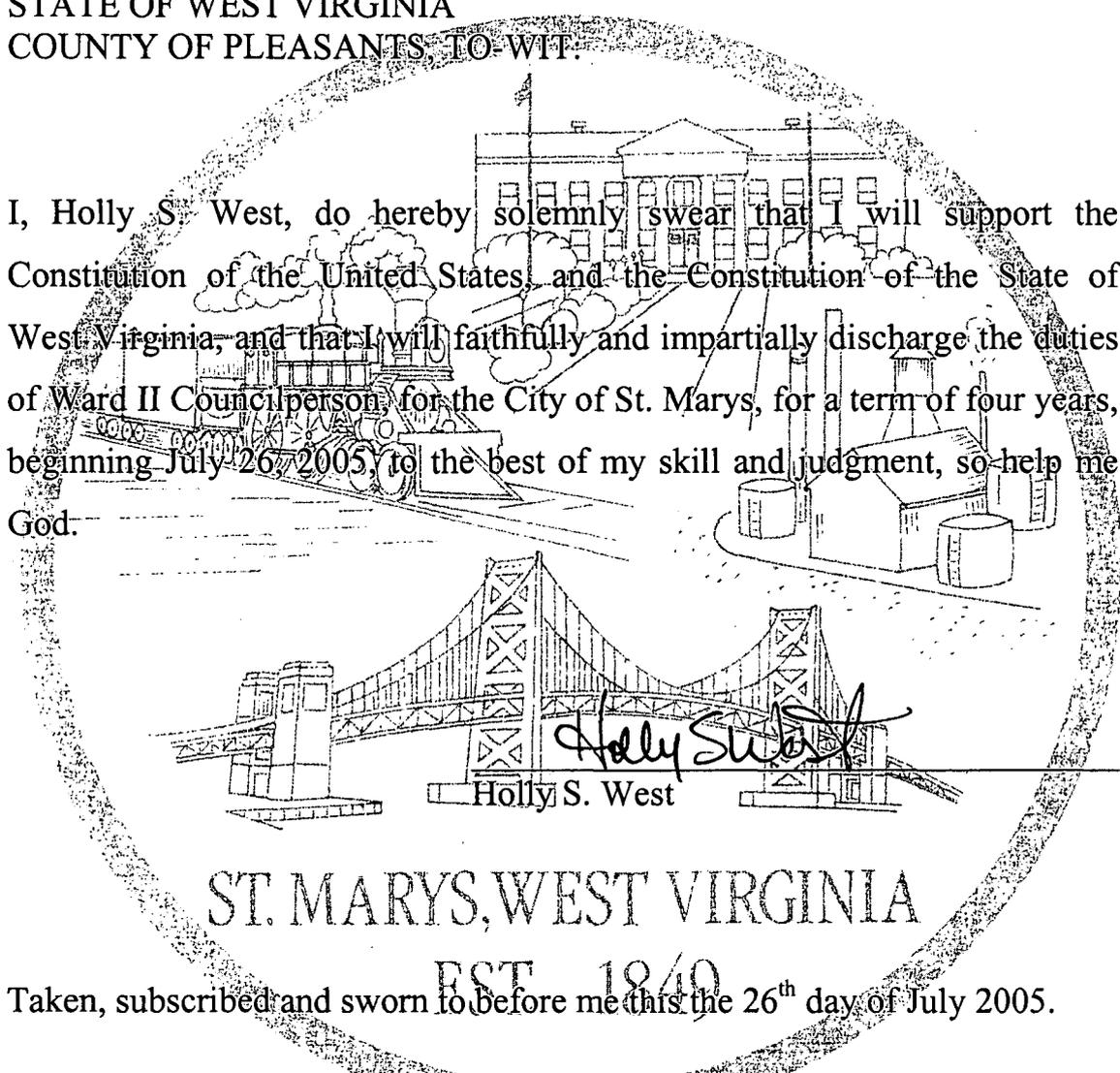
Taken, subscribed and sworn to before me this the 29<sup>th</sup> day of June 2005.

  
L. Paul Ingram, Mayor

# City of St. Marys

418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:



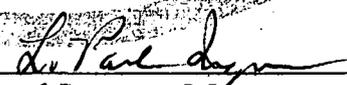
I, Holly S. West, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward II Councilperson for the City of St. Marys, for a term of four years, beginning July 26, 2005, to the best of my skill and judgment, so help me God.

  
Holly S. West

ST. MARYS, WEST VIRGINIA

EST. 1840

Taken, subscribed and sworn to before me this the 26<sup>th</sup> day of July 2005.

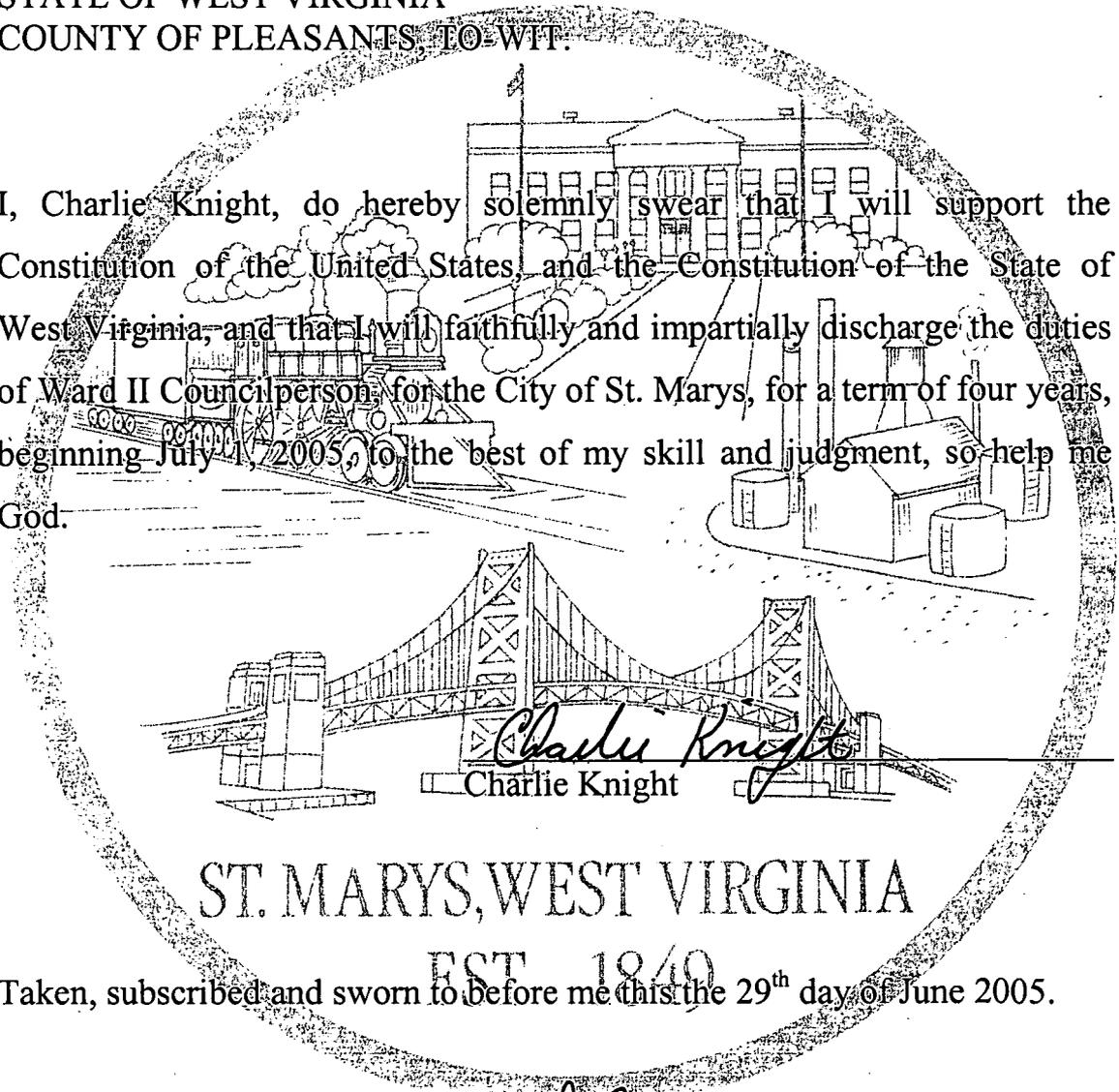
  
L. Paul Ingram, Mayor

# City of St. Marys

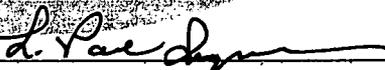
418 Second Street  
ST. MARYS, WEST VIRGINIA 26170  
Phone: (304) 684-2401  
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, Charlie Knight, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward II Council person for the City of St. Marys, for a term of four years, beginning July 1, 2005, to the best of my skill and judgment, so help me God.



Taken, subscribed and sworn to before me this the 29<sup>th</sup> day of June 2005.

  
L. Paul Ingram, Mayor

# City of St. Marys

418 Second Street

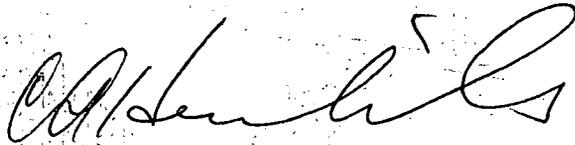
ST. MARYS, WEST VIRGINIA 26170

Phone: (304) 684-2401

Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, C. A. "Mike" Hendricks, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward III Councilperson for the City of St. Marys, for a term of four years, beginning July 1, 2007, to the best of my skill and judgment, so help me God.



C. A. Hendricks

Taken, subscribed and sworn to before me this 29<sup>th</sup> day of June 2007.



L. Paul Ingram, Mayor

# City of St. Marys

418 Second Street

ST. MARYS, WEST VIRGINIA 26170

Phone: (304) 684-2401

Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, J. B. Phillips, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward I Councilperson for the City of St. Marys, for a term of four years, beginning July 1, 2007, to the best of my skill and judgment, so help me God.



J. B. Phillips

Taken, subscribed and sworn to before me this 29<sup>th</sup> day of June 2007.



L. Paul Ingram, Mayor

# City of St. Marys

418 Second Street

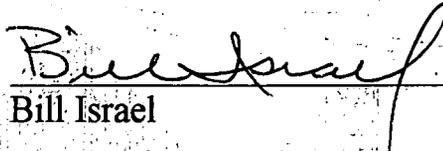
ST. MARYS, WEST VIRGINIA 26170

Phone: (304) 684-2401

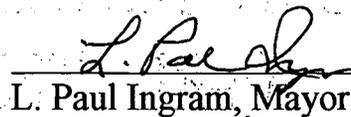
Fax: (304) 684-2463

STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, TO-WIT:

I, Bill Israel, do hereby solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Ward II Councilperson for the City of St. Marys, for a term of four years, beginning July 1, 2007, to the best of my skill and judgment, so help me God.

  
\_\_\_\_\_  
Bill Israel

Taken, subscribed and sworn to before me this 29<sup>th</sup> day of June 2007.

  
\_\_\_\_\_  
L. Paul Ingram, Mayor

MAY 20 1996

"RESOLUTION ESTABLISHING RULES BY WHICH THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS AND THE TIME, PLACE AND PURPOSE OF ALL SPECIAL MEETINGS ARE TO BE MADE AVAILABLE, IN ADVANCE, TO THE PUBLIC AND NEWS MEDIA AND PROVIDING WHEN THIS RESOLUTION AND SUCH RULES SHALL TAKE EFFECT."

Be it Resolved and Ordered by Council of the City of St. Marys, Pleasants County, West Virginia:

Section 1. Statutory Mandate for These Rules. The rules established in and by this Resolution are mandated by and promulgated pursuant to Chapter 6, Article 9A, of the Code of West Virginia, 1931, as amended (herein called the "Act"), and other applicable provisions of law.

Section 2. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) Section 3 of the Act requires each governing body, as defined in the Act, to promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(B) The Council of the City of St. Marys, Pleasants County, West Virginia (herein called the "Council"), is a governing body within the meaning of the Act.

(C) Accordingly, it is hereby ordered that the rules set out in Section 3 hereof be promulgated and established as Rules of Procedure of the Council.

Section 3. Rules. The following are hereby promulgated and established as Rules of Procedure of the Council:

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, post, and leave posted throughout the year to which it applies, at the regular meeting place where notices customarily are posted a notice setting forth the times and places of the Council's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality sufficient to withstand deterioration throughout the year to which it applies. Additional copies of the notice shall be delivered to the Recorder.

Also immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, distribute to each of the newspapers, television stations, radio stations and other news media listed below a notice identical to that posted.

COPY

News Media

Address

St. Marys Oracle

P.O. Box 27  
St. Marys, WV 26170

a notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In June of each year after the adoption of this Resolution, the Council shall review the above list and shall amend such list as needed, in the opinion of the Council, to reflect properly all the newspapers, television stations, radio stations and other news media that customarily cover news of the area served by the Council.

In the event of any modification in the time or place of a regularly scheduled meeting of the Council, notice of such modification shall be given to the public and news media by posting at the place and distributing to the new media in the manner set forth above, not less than three (3) days prior to the date of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the date of such rescheduled meeting, a notice setting forth such modification in the time or place of such regularly scheduled meeting. A copy of such notice shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of a regularly scheduled meeting and of the time and place for the continuation or reconvening thereof publicly given during such regularly scheduled meeting shall be adequate notice to the public and news media of the time and place thereof.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule 2. Notice of Special Meeting. Not less than three (3) but not more than eight (8) days prior to the date set for any special meeting of the Council, the Council shall instruct the Recorder to, and the Recorder shall, post on the door of the regular meeting place of the Council, and at such other place, if any, where notices customarily are posted

a notice setting forth the time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than three (3) days prior to the date set for such special meeting, the Recorder shall distribute to each of the newspapers, television stations, radio stations and other news media listed in Rule No. 1 hereof a notice identical to that posted. Amendments made to such list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of any special meeting and of the time and place for the continuation or reconvening thereof publicly given during such special meeting shall be adequate notice to the public and news media of the time and place thereof, the purpose or purposes therefor remaining the same.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule No. 3. Emergency Meeting. A meeting as of the Council may be held without the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of any emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Council and shall be attested to in a certificate by the Recorder describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Section 4. Conflicting Provisions Repealed. All resolutions, orders and rules, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflicts, hereby repealed.

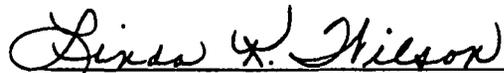
Section 5. Effective Time. This Resolution and the rules promulgated hereby shall take effect immediately upon the adoption hereof.

Introduced at Council Meeting: May 21, 1996

Adopted by Council: May 21, 1996

  
Louis F. Flade, Mayor

[SEAL]

  
Linda Wilson, Recorder/Treasurer

40436

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**FINAL**

8/30/2008

Per Commission  
Order Waiving the  
Exception Period

Entered: August 20, 2008

CASE NO. 08-0635-WS-CN

CITY OF ST. MARYS, a municipal utility,  
St. Marys, Pleasants County.Application for a certificate of convenience  
and necessity for a project to construct certain  
additions, betterments and improvements to St.  
Marys' combined waterworks and sewerage system.RECOMMENDED DECISION

On April 24, 2008, the City of St. Marys (City) filed an application with the Public Service Commission for a certificate of convenience and necessity to construct certain additions, betterments and improvements to the City's combined waterworks and sewerage system. The proposed project consists of the following: (1) replacement of various water and sewer lines; (2) construction of one new water storage tank to replace an existing tank; and (3) construction of a second new water storage tank to supplement an existing tank.

The estimated total cost of the project is approximately \$5,349,000 and is to be funded by two loans in the aggregate principal amount of \$5,349,000 from the United States Department of Agriculture, Rural Utilities Service (RUS). The City will issue revenue bonds, Series 2008 A and B, in an aggregate principal amount equal to the aggregate principal amount of the RUS loans.

The City proposes to fund the RUS loans by a two-stage increase in its water rates and charges and by a single-stage increase in its sewer rates and charges, as adopted in its ordinance approved March 18, 2008. The City's first-stage water rates will increase by approximately 40% and the sewer rates will increase by varying percentages depending upon a customer's level of water usage (approximately 36% for a typical customer using 4,500 gallons of water per month).

The second-stage water rate increase will become effective upon substantial completion of the waterworks improvement portion of the project or October 1, 2009, whichever occurs first. At that time, water rates will increase by approximately 52%.

By a Commission Notice of Filing Order entered on April 24, 2008, the City was required to publish a copy of the Notice of Filing of its application once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Pleasants County, making due return to the Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene

was given thirty (30) days to file a written protest or to request intervention.

By Commission Order entered May 7, 2008, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before September 8, 2008, if no protests were filed and, on or before November 20, 2008, if the case was protested.

On May 9, 2008, the City submitted an affidavit of publication reflecting that the Notice of Filing was published on April 30, 2008, in the St. Marys Oracle, a newspaper of general circulation in Pleasants County. No protests were filed within the 30-day protest period which expired on May 30, 2008. Therefore, the decision due date for the Division of Administrative Law Judges is on or before September 8, 2008.

On May 28, 2008, John Auville, Esquire, Staff Attorney, filed the Initial Joint Staff Memorandum to which was attached the Initial Internal Memorandum prepared by Bob Cadle, Utilities Analyst II, Water and Wastewater Division, and James Spurlock, Technical Analyst II, Engineering Division. Staff stated that the City has already started work on the emergency portion of the project. Staff reviewed the terms of the interim financing and found them to be reasonable. Given the public health and environmental issues raised by a broken sewer line and the City's financial state, Staff did not object to the City pursuing the emergency project at this time. Staff was reviewing the filing and would file its final recommendation within the Commission's time frame. Staff recommended that the case be referred to the Division of Administrative Law Judges.

On May 30, 2008, the City filed a letter with the Commission stating that it did not object to Staff's Initial Joint Staff Memorandum filed on May 28, 2008.

By Procedural Order dated July 17, 2008, Commission Staff was required to file its final substantive recommendation in this case on or before July 23, 2008.

On July 25, 2008, Staff Attorney Auville filed the Final Joint Staff Memorandum to which was attached the July 25, 2008 Final Internal Memorandum prepared by Mr. Cadle and Mr. Spurlock. Staff reported that the City had acquired interim financing from the Union Bank of Sistersville in the amount of \$334,000, with an interest rate of 5.15%. The loan repayment is interest only for one (1) year and is to be fully repaid as soon as permanent financing is obtained from RUS. RUS has agreed to fully fund the emergency sewer project and, at closing, the interim financing is to be retired. Staff's cash flow analysis of the emergency sewer project reveals a 178.98% debt service coverage factor. Staff did not object to the emergency sewer project financing.

Staff reported that the purpose of the project is to replace aged and deteriorated portions of the water and sewer systems which were constructed in the early 1900s. The water lines have frequent breaks and many are undersized for fire protection. Unaccounted-for-water is approximately 40%. A 490,000 gallon water tank is to be replaced due to its age and deteriorated condition. The additional 260,000 gallon water tank is needed to serve a new subdivision and to meet anticipated future

demand. The sewer lines require frequent repairs and incur excessive inflow and infiltration when it rains. Approximately 2,000 feet of the proposed sewer line replacement on Maple Street required immediate, emergency repair.

Staff opined that the total estimated project cost of \$5,349,000 is reasonable. The City serves approximately 1,120 water customers and 1,117 sewer customers, which results in a combined cost per customer of approximately \$4,776. Staff believes that, although difficult to quantify, O&M costs may decrease due to reduced leaks and repairs.

The State Office of Environmental Health Services has issued Permit Nos. 17,650 and 17,924 for the project. Staff's review of the project's plans and specifications did not reveal any conflicts with the Commission's rules and regulations.

The project will be funded by two (2) loans in the amounts of \$4,315,000 (Original Loan) and \$1,034,000 (Subsequent Loan) through the RUS. The City will issue Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A and Series 2080 B, in an aggregate principal amount equal to the aggregate principal amount of the RUS loans. The Original Loan is for 40 years at an interest rate of 4.5%. The Subsequent Loan is for 40 years at an interest rate of 4.375%. The loans require interest payment only for the first two (2) years. The remaining 38 years require an annual debt service payment of \$237,672 for the Original Loan and \$55,968 for the Subsequent Loan, or a combined annual payment of \$293,663. RUS requires a debt service reserve of 10% of the annual debt payments and a renewal and replacement equal to 2.5% of operating revenues. The sewer portion of the loans' principal and interest annual payments is \$123,596, and the water portion of the loans' principal and interest annual payments is \$171,027. As of result of the project, the pro forma cash flow surplus for sewer is projected to be \$6,377, with a debt coverage of 130.37%. For water, the pro forma cash flow surplus is projected to be \$15,569, with a debt coverage of 140.1%.

Water rate increases are to be phased in with a two step process pursuant to the City's most recent rate ordinance. The ordinance, reviewed by the Commission's Legal Division, was properly passed. The first increase went into effect on May 2, 2008. The second increase will go into effect as soon as the project is substantially complete or by October 2009, whichever comes first. Staff opined that the phased-in rates are sufficient to cover the costs incurred during the project.

In summation, Staff recommended the following: (a) that the City's application for a certificate of convenience and necessity be approved; (b) that the project financing, consisting of a \$4,315,000 RUS Original Loan for 40 years at 4.5% interest and a \$1,034,000 RUS Supplemental Loan at 4.375% interest for 40 years, be approved; (c) that the City be required to adopt the Staff-recommended tariffs in its next ordinance to bring the City's tariff language into compliance with the Commission's current tariff rules; (d) that, if there are any changes in the plans or scope of the project, the City be required to seek Commission approval for such changes; and, (e) that the City be required to file a copy of the certificate of substantial completion issued for each construction contract associated with the project as soon as it becomes available.

On July 29, 2008, the City filed a letter in which the City indicated that there was no objection to Staff's recommendations. However, the City noted that Staff's recommended tariffs inadvertently omitted charges.

On July 31, 2008, Staff Attorney Auville filed the Further Final Joint Staff Memorandum to which was attached the July 30, 2008 Further Final Internal memorandum prepared by Mr. Cadle and Mr. Spurlock. Staff indicated that the attached tariffs had been corrected to include the charge for a 4-inch service connection under the Sprinkler System/Hose Connections section.

As of the date of this Recommended Decision, no protests have been filed.

#### DISCUSSION

Based upon a review of the City's application, as well as Staff's recommendations, it is clear that the proposed project is financially feasible and that the financing of the proposed project should be approved, since the City's phased-in water rates and single stage sewer rates, per the City's newly adopted Ordinance, are sufficient to cover the costs incurred for the project.

The need for the proposed project is evident, since it will provide the City's residents with better water and sewer service through the replacement of aged and deteriorated portions of the water and sewer systems.

#### FINDINGS OF FACT

1. On April 24, 2008, the City of St. Marys filed an application, duly verified, for a certificate of convenience and necessity to construct improvements to its combined waterworks and sewerage system and for approval of the financing for the project. (See, application filed April 18, 2008).

2. Part of the project involves emergency work that the City had already begun. The City needed to replace 2,000 feet of vitrified clay sewer pipes from the end of Maple Street to Gallaher Street due to broken, separated and/or sagging piping. (See, Final Joint Staff Memorandum with attachment filed July 25, 2008).

3. The City acquired interim financing from the Union Bank of Sistersville in the amount of \$334,000 at an interest rate of 5.15% to pay for the emergency sewer line repairs. The loan repayment is interest only for one (1) year and will be fully repaid as soon as permanent financing is obtained from RUS. Staff found the terms of the interim financing reasonable. (See, Final Joint Staff Memorandum with attachment filed July 25, 2008).

4. The total estimated project cost of \$5,349,000 is to be funded by two (2) USDA RUS loans in the aggregate amount of \$5,349,000. The Original Loan of \$4,315,000 is to be repaid over 40 years at an interest rate of 4.5%, and the Subsequent Loan is to be repaid over 40 years at an interest rate of 4.375%. The City has already increased its sewer and

water rates and charges by an ordinance which became effective on May 2, 2008. A second phase of the water rate increase is to go into effect as soon as the project is substantially complete, or October 2009, whichever comes first. Therefore, the City anticipates no additional change in its water and sewer rates as a result of the proposed project. (See, application filed April 24, 2008).

5. The City gave notice of the filing of its certificate application in accordance with the Commission's requirements by publishing a Notice of Filing on April 30, 2008, in the St. Marys Oracle, a newspaper duly qualified by the Secretary of State, published and of general circulation in Pleasants County, West Virginia. (See, Affidavit of Publication filed May 9, 2008).

6. No protests were received to the certificate application within the thirty-day response period, which expired on May 30, 2008, or as of the date of this Order. (See, case file generally).

7. Commission Staff recommended that the City's certificate application be granted and that the Commission approve the project financing of the Original Loan in the amount of \$4,315,000 for a term of 40 years and at an interest rate of 4.5% and the Subsequent Loan of \$1,034,000 for a term of 40 years and at an interest rate of 4.375%. (See, Final Joint Staff Memorandum with attachment filed July 25, 2008).

8. The City did not object to Staff's final recommendations. However, the City noted that the attached water tariffs omitted a charge for a 4-inch connection for sprinkler system/hose connections. (See, filing dated July 29, 2008).

9. Staff filed corrected tariffs. (See, Further Final Joint Staff Memorandum with attachment dated July 31, 2008).

#### CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the City of St. Marys to construct improvements to its combined waterworks and sewerage system, as described in the plans and specifications filed with the application.

2. It is reasonable to approve the project financing, consisting of the USDA RUS Original Loan in the amount of \$4,315,000 for 40 years at 4.5% interest and the USDA RUS Subsequent Loan in the amount of \$1,034,000 for 40 years at 4.375% interest.

3. It is also reasonable to approve the interim financing from the Union Bank of Sistersville for the emergency sewer line repairs in the amount of \$334,000 with an interest rate of 5.15%. The loan repayment is interest only for one (1) year and is to be fully repaid as soon as permanent financing is obtained from RUS.

#### ORDER

IT IS, THEREFORE, ORDERED that the application for a certificate of convenience and necessity filed herein on April 24, 2008, by the City of St. Marys to construct improvements to the City's combined waterworks and

sewerage system, all as more particularly described in the engineering plans and specifications filed with the application, be, and it hereby is, granted, without need for a formal hearing.

IT IS FURTHER ORDERED that the financing of the project certificated herein, consisting of an USDA RUS loan in the amount of \$4,315,000 for 40 years at 4.5% interest and a second USDA RUS loan in the amount of \$1,034,000 for 40 years at an interest rate of 4.375%, be, and hereby is, approved.

IT IS FURTHER ORDERED that the interim financing for emergency sewer repairs through a loan in the amount of \$334,000 with an interest rate of 5.15% from the Union Bank of Sisterville be, and hereby is, approved. The loan is to be fully repaid as soon as permanent financing is obtained from RUS.

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

IT IS FURTHER ORDERED that the City of St. Marys submit a certificate of substantial completion for the project from its engineer as soon as it becomes available.

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

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the City of St. Marys comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

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

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

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

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

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to

make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

*Deborah Yost VanDervort*  
Deborah Yost VanDervort  
Administrative Law Judge

DYV:s:mal:bam  
080635aa.wpd



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

March 18, 2008

The Honorable L. Paul Ingram  
Mayor, City of St. Marys  
418 Second Street  
St. Marys, WV 26170

RE: Amendment No. 1 to  
Letter of Conditions

Dear Mayor Ingram:

This letter, with Attachment No. 1 amends the letter of conditions dated July 31, 2006 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$4,315,000 and a subsequent RUS loan in the amount of \$1,034,000, for a total project cost of \$5,349,000.

Subject to the requirements noted herein, all of the conditions of the July 31, 2006 letter of conditions remain in effect and must be satisfied prior to loan closing.

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

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

Federal Building • 75 High Street • Suite 320 • Morgantown, WV 26705-7500  
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836  
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

The conditions referred to above are as follows:

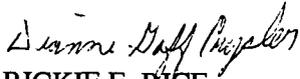
1. Loan Repayment – The subsequent loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. The remaining 456 months will be equal amortized monthly installments. For planning purposes, use a 4.375% interest rate and monthly amortization factor of 0.00451 which provides for a monthly payment of \$4,664 on the subsequent loan. (The monthly payment for the initial \$4,315,000 loan is \$19,806 and the monthly payment for the subsequent \$1,034,000 loan is \$4,664, for a total loan of \$5,349,000 and a total monthly payment of \$24,470.
2. The bond for the \$1,034,000 subsequent loan will need to be a separate bond and it will include the interest rate determined applicable prior to loan closing. It will be satisfactory for the subsequent loan bond to be described in the same loan resolution as the \$4,315,000 initial loan and for all other information and items of the loan resolution and bond transcript to reflect a \$5,349,000 total issue consisting of two or more bonds. A copy of this letter should be provided to your bond counsel immediately.
3. Public Service Commission Approval - You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.
4. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

Form 1940-1 – “Request for Obligation of Funds”  
RUS Bulletin 1780-27 – “Loan Resolution”  
Form RD 1942-46 - “Letter of Intent to Meet Conditions”

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the Public Service District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

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

Sincerely,

  
for **RICKIE E. RICE**  
State Director

Enclosures

cc: RUS Rural Development Specialist  
Parkersburg, WV

Smith, Cochran and Hicks, PLLC  
Charleston, WV

Keith White, Esquire  
St. Marys, WV

Jackson Kelly, PLLC  
Charleston, WV

S & S Engineers, Inc.  
Charleston, WV

**Water & Sewer System Improvements**  
**Project Construction Budget**

<u>PROJECT COST</u>	<u>RUS SUB.</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
	<u>LOAN</u>		
CONSTRUCTION	\$ 888,850	\$ 2,759,650	\$ 3,648,500
CONST. CONTINGENCY	\$ 88,885	\$ 275,965	\$ 364,850
LAND & RIGHTS		\$ 4,000	\$ 4,000
LEGAL FEES		\$ 10,000	\$ 10,000
BOND COUNSEL		\$ 30,500	\$ 30,500
ACCOUNTING		\$ 6,000	\$ 6,000
ENGINEERING FEES		\$ 566,000	\$ 566,000
Basic - \$296,000			
Insp. - \$240,000			
Special - \$30,000			
EQUIPMENT		\$ 300,000	\$ 300,000
INTEREST		\$ 278,550	\$ 278,550
PROJECT CONTG.	\$ 56,265	\$ 84,335	\$ 140,600
<b>TOTAL</b>	<b>\$ 1,034,000</b>	<b>\$ 4,315,000</b>	<b>\$ 5,349,000</b>

Rates - Water

Available for general domestic, commercial, and industrial service.

First	3,000	gallons @	\$ 6.02	per M gallons
Next	6,000	gallons @	\$ 5.46	per M gallons
Next	6,000	gallons @	\$ 4.62	per M gallons
Next	15,000	gallons @	\$ 3.61	per M gallons
Over	30,000	gallons @	\$ 2.65	per M gallons

Minimum Charge

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

5/8" x 3/4"	meter	\$ 18.06	per month
3/4"	meter	\$ 27.09	per month
1"	meter	\$ 45.15	per month
1 1/2"	meter	\$ 90.30	per month
2"	meter	\$ 144.48	per month
3"	meter	\$ 270.90	per month
4"	meter	\$ 451.50	per month
6"	meter	\$ 903.00	per month
8"	meter	\$ 1,444.80	per month

Minimum Monthly Bill \$ 18.06 for 3,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, service to the customer will be discontinued. Service will not be restored until all past due bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

\$250.00

Reconnection Charge

\$20.00

Rates - Sewer

Available for general domestic, commercial, and industrial service.

Flat Rate      3,000      gallons @      \$      6.03      per M gallons

Minimum Charge

Minimum Monthly Bill    \$ 18.09      for      3,000      gallons

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

CITY OF ST. MARYS  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM - RESIDENTIAL WATER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	513	901.50	513						
3,001 - 9,000	421	2,343.25		1,263.00	1,079.25				
9,001 - 15,000	29	342.50		87.00	174.00	81.50			
15,000 - 30,000	6	135.17		18.00	36.00	36.00	45.17		
Over 30,000	4	242.08		12.00	24.00	24.00	60.00	122.08	
<b>Monthly Total</b>	<b>973</b>	<b>3,964.50</b>	<b>513</b>	<b>1,380.00</b>	<b>1,313.25</b>	<b>141.50</b>	<b>105.17</b>	<b>122.08</b>	
<b>Proposed Rates</b>			<b>\$ 18.06</b>	<b>\$ 6.02</b>	<b>\$ 5.46</b>	<b>\$ 4.62</b>	<b>\$ 3.61</b>	<b>\$ 2.65</b>	
<b>Monthly Revenues</b>			<b>\$ 9,264.78</b>	<b>\$ 8,307.60</b>	<b>\$ 7,170.35</b>	<b>\$ 653.73</b>	<b>\$ 379.66</b>	<b>\$ 323.51</b>	<b>\$ 26,099.63</b>
<b>Annual Revenues</b>			<b>\$ 111,177.36</b>	<b>\$ 99,691.20</b>	<b>\$ 86,044.14</b>	<b>\$ 7,844.76</b>	<b>\$ 4,555.96</b>	<b>\$ 3,882.14</b>	<b>\$ 313,195.57</b>

Adjustment Factor 0.992974

**Adjusted Annual Revenues \$ 310,995**

CITY OF ST. MARYS  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM - COMMERCIAL WATER

Blocking	Cust.	Gal/ Mo.	3/4" Minimums	1" Minimums	2" Minimums	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
2" Minimums	4	72.00			4						
1" Minimums	3	15.83		3							
0 - 3,000	77	86.67	77								
3,001 - 9,000	19	115.25				57.00	58.25				
9,001 - 15,000	6	66.42				18.00	36.00	12.42			
15,000 - 30,000	3	68.42				9.00	18.00	18.00	23.42		
Over 30,000	4	232.41				12.00	24.00	24.00	60.00	112.41	
<b>Monthly Total</b>	<b>116</b>	<b>657.00</b>	<b>77</b>	<b>3</b>	<b>4</b>	<b>96.00</b>	<b>136.25</b>	<b>54.42</b>	<b>83.42</b>	<b>112.41</b>	
<b>Proposed Rates</b>			<b>\$ 18.06</b>	<b>\$ 45.36</b>	<b>\$ 185.69</b>	<b>\$ 6.02</b>	<b>\$ 5.46</b>	<b>\$ 4.62</b>	<b>\$ 3.61</b>	<b>\$ 2.65</b>	
<b>Monthly Revenues</b>			<b>\$ 1,390.62</b>	<b>\$ 136.08</b>	<b>\$ 742.76</b>	<b>\$ 577.92</b>	<b>\$ 743.93</b>	<b>\$ 251.42</b>	<b>\$ 301.15</b>	<b>\$ 297.89</b>	<b>\$ 4,441.76</b>
<b>Annual Revenues</b>			<b>\$16,687.44</b>	<b>\$ 1,632.96</b>	<b>\$8,913.12</b>	<b>\$ 6,935.04</b>	<b>\$ 8,927.10</b>	<b>\$ 3,017.04</b>	<b>\$ 3,613.75</b>	<b>\$ 3,574.64</b>	<b>\$ 53,301.10</b>

Adjustment Factor 1.029772

**Adjusted Annual Revenues \$ 54,888**

CITY OF ST. MARYS  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM - GOVERNMENTAL WATER

Blocking	Cust.	Gal/ Mo.	3/4" Minimums	1" Minimums	2" Minimums	4" Minimums	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
4" Minimums	1	37.92				1						
2" Minimums	3	41.67			3							
1" Minimums	1	4.50		1								
0 - 3,000	10	15.92	10									
3,001 - 9,000	5	28.25					15.00	13.25				
9,001 - 15,000	2	20.25					6.00	12.00	2.25			
15,000 - 30,000	1	21.08					3.00	6.00	6.00	6.08		
Over 30,000	4	1817.33					12.00	24.00	24.00	60.00	1,697.33	
<b>Monthly Total</b>	<b>26</b>	<b>1986.92</b>	<b>10</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>36.00</b>	<b>55.25</b>	<b>32.25</b>	<b>66.08</b>	<b>1,697.33</b>	
<b>Proposed Rates</b>			<b>\$ 18.06</b>	<b>\$ 45.36</b>	<b>\$ 185.69</b>	<b>\$ 742.19</b>	<b>\$ 6.02</b>	<b>\$ 5.46</b>	<b>\$ 4.62</b>	<b>\$ 3.61</b>	<b>\$ 2.65</b>	
<b>Monthly Revenues</b>			<b>\$ 180.60</b>	<b>\$ 45.36</b>	<b>\$ 557.07</b>	<b>\$ 742.19</b>	<b>\$ 216.72</b>	<b>\$ 301.67</b>	<b>\$ 149.00</b>	<b>\$ 238.55</b>	<b>\$ 4,497.92</b>	<b>\$ 6,929.07</b>
<b>Annual Revenues</b>			<b>\$2,167.20</b>	<b>\$ 544.32</b>	<b>\$6,684.84</b>	<b>\$8,906.28</b>	<b>\$ 2,600.64</b>	<b>\$ 3,619.98</b>	<b>\$ 1,787.94</b>	<b>\$ 2,862.59</b>	<b>\$ 53,975.09</b>	<b>\$ 83,148.88</b>

Adjustment Factor    0.999015

**Adjusted Annual Revenues    \$    83,067**

CITY OF ST. MARYS  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM - INDUSTRIAL WATER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	2.92	2.42	2.92						
3,001 - 9,000									
9,001 - 15,000	0.08	0.92		0.24	0.48	0.20			
15,000 - 30,000									
Over 30,000									
<b>Monthly Total</b>	<b>3</b>	<b>3.34</b>	<b>2.92</b>	<b>0.24</b>	<b>0.48</b>	<b>0.20</b>	<b>0.00</b>	<b>0.00</b>	
<b>Proposed Rates</b>			<b>\$ 18.06</b>	<b>\$ 6.02</b>	<b>\$ 5.46</b>	<b>\$ 4.62</b>	<b>\$ 3.61</b>	<b>\$ 2.65</b>	
<b>Monthly Revenues</b>			<b>\$ 52.74</b>	<b>\$ 1.44</b>	<b>\$ 2.62</b>	<b>\$ 0.92</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 57.72</b>
<b>Annual Revenues</b>			<b>\$ 632.82</b>	<b>\$ 17.34</b>	<b>\$ 31.45</b>	<b>\$ 11.09</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 692.70</b>

Adjustment Factor 1.001877

**Adjusted Annual Revenues \$ 694**

CITY OF ST. MARYS  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM - RESALE WATER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000									
3,001 - 9,000									
9,001 - 15,000									
15,000 - 30,000									
Over 30,000	1	3,283.17		3.00	6.00	6.00	15.00	3,253.17	
<b>Monthly Total</b>	<b>1</b>	<b>3,283.17</b>	<b>0.00</b>	<b>3.00</b>	<b>6.00</b>	<b>6.00</b>	<b>15.00</b>	<b>3,253.17</b>	
<b>Proposed Rates</b>			\$ 18.06	\$ 6.02	\$ 5.46	\$ 4.62	\$ 3.61	\$ 2.65	
<b>Monthly Revenues</b>			\$ -	\$ 18.06	\$ 32.76	\$ 27.72	\$ 54.15	\$ 8,620.90	\$ 8,753.59
<b>Annual Revenues</b>			\$ -	\$ 216.72	\$ 393.12	\$ 332.64	\$ 649.80	\$ 103,450.81	\$ 105,043.09

CITY OF ST. MARYS  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM - WELL USERS WATER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	1.75	3.50	1.75						
3,001 - 9,000	0.25	1.17		0.75	0.42				
9,001 - 15,000									
15,000 - 30,000									
Over 30,000									
<b>Monthly Total</b>	<b>2</b>	<b>4.67</b>	<b>1.75</b>	<b>0.75</b>	<b>0.42</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	
<b>Proposed Rates</b>			<b>\$ 18.06</b>	<b>\$ 6.02</b>	<b>\$ 5.46</b>	<b>\$ 4.62</b>	<b>\$ 3.61</b>	<b>\$ 2.65</b>	
<b>Monthly Revenues</b>			<b>\$ 31.61</b>	<b>\$ 4.52</b>	<b>\$ 2.29</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 38.41</b>
<b>Annual Revenues</b>			<b>\$ 379.26</b>	<b>\$ 54.18</b>	<b>\$ 27.52</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 460.96</b>

Adjustment Factor 0.976224

**Adjusted Annual Revenues \$ 450**

CITY OF ST. MARYS  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM - RESIDENTIAL SEWER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	405	27.75	405						
3,001 - 9,000	370	1,892.58		1,110.00	782.58				
9,001 - 15,000	21	245.00		63.00	126.00	56.00			
15,000 - 30,000	4	84.83		12.00	24.00	24.00	24.83		
Over 30,000	3	198.83		9.00	18.00	18.00	45.00	108.83	
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Monthly Total	803	2,448.99	405	1,194.00	950.58	98.00	69.83	108.83	
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Proposed Rates			\$ 18.09	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	
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Monthly Revenues			\$ 7,326.45	\$ 7,199.82	\$ 5,732.00	\$ 590.94	\$ 421.07	\$ 656.24	\$ 21,926.53
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Annual Revenues			\$ 87,917.40	\$ 86,397.84	\$ 68,783.97	\$ 7,091.28	\$ 5,052.90	\$ 7,874.94	\$ 263,118.33
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Adjustment Factor 1.013027

**Adjusted Annual Revenues \$ 266,546**

CITY OF ST. MARYS  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM - COMMERCIAL SEWER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	69	83.08	69						
3,001 - 9,000	26	116.50		78.00	38.50				
9,001 - 15,000	5	70.25		15.00	30.00	25.25			
15,000 - 30,000	4	79.58		12.00	24.00	24.00	19.58		
Over 30,000	5	278.33		15.00	30.00	30.00	75.00	128.33	
<b>Monthly Total</b>	<b>109</b>	<b>627.74</b>	<b>69</b>	<b>120.00</b>	<b>122.50</b>	<b>79.25</b>	<b>94.58</b>	<b>128.33</b>	
<b>Proposed Rates</b>			<b>\$ 18.09</b>	<b>\$ 6.03</b>					
<b>Monthly Revenues</b>			<b>\$ 1,248.21</b>	<b>\$ 723.60</b>	<b>\$ 738.68</b>	<b>\$ 477.88</b>	<b>\$ 570.32</b>	<b>\$ 773.83</b>	<b>\$ 4,532.51</b>
<b>Annual Revenues</b>			<b>\$ 14,978.52</b>	<b>\$ 8,683.20</b>	<b>\$ 8,864.10</b>	<b>\$ 5,734.53</b>	<b>\$ 6,843.81</b>	<b>\$ 9,285.96</b>	<b>\$ 54,390.12</b>

Adjustment Factor 1.02901

**Adjusted Annual Revenues \$ 55,968**

CITY OF ST. MARYS  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM - INDUSTRIAL SEWER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	0.92	1.17	0.90						
3,001 - 9,000									
9,001 - 15,000	0.08	0.91		0.24	0.48	0.19			
15,000 - 30,000									
Over 30,000									
<hr/>									
Monthly Total	1	2.08	0.90	0.24	0.48	0.19	0.00	0.00	
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Proposed Rates			\$ 18.09	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	
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Monthly Revenues			\$ 16.28	\$ 1.45	\$ 2.89	\$ 1.15	\$ -	\$ -	\$ 21.77
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Annual Revenues			\$ 195.37	\$ 17.37	\$ 34.73	\$ 13.75	\$ -	\$ -	\$ 261.22
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Adjustment Factor 1.015326

**Adjusted Annual Revenues \$ 265**

CITY OF ST. MARYS  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM - WELL USERS SEWER

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	TOTAL REVENUE
0 - 3,000	1	1.83	1.00						
3,001 - 9,000	1	4.25		3.00	1.25				
9,001 - 15,000									
15,000 - 30,000									
Over 30,000									
<b>Monthly Total</b>	<b>2</b>	<b>6.08</b>	<b>1.00</b>	<b>3.00</b>	<b>1.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	
Proposed Rates			\$ 18.09	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	\$ 6.03	
Monthly Revenues			\$ 18.09	\$ 18.09	\$ 7.54	\$ -	\$ -	\$ -	\$ 43.72
Annual Revenues			\$ 217.08	\$ 217.08	\$ 90.45	\$ -	\$ -	\$ -	\$ 524.61

Adjustment Factor 0.979775

**Adjusted Annual Revenues \$ 514**

CITY OF ST MARYS - COMBINED  
OPERATING BUDGET

OPERATING INCOME

Metered Sales	1,052,147	
Well Users Sales	964	
Bulk Sales-Water	105,043	
Penalties	20,065	
Other Income	4,930	
TOTAL OPERATING INCOME		<u>\$ 1,183,149</u>

NON OPERATING INCOME

Other Income	\$ 782	
TOTAL NON OPERATING INCOME		<u>\$ 782</u>

TOTAL INCOME

\$ 1,183,931

EXPENSES

O & M	\$ 567,442	
Taxes	\$ 17,551	
Replacement of Short-Lived Assets	\$ 25,000	
TOTAL EXPENSES		<u>\$ 609,993</u>

INCOME AVAILABLE FOR D/S

\$ 573,938

DEBT SERVICE

Existing Bond P & I	\$ 148,640	
Proposed Bond P & I	\$ 237,672	
Proposed Sub. Bond P & I	\$ 55,968	

TOTAL DEBT SERVICE

\$ 442,280

DEBT SERVICE RESERVE

Existing Debt Service Reserve	\$ 10,687	
Proposed Debt Service Reserve	\$ 23,767	
Proposed Sub. Debt Service Reserve	\$ 5,597	

TOTAL DEBT SERVICE RESERVE

\$ 40,051

SURPLUS (DEFICIT)

\$ 91,607

DEBT COVERAGE

130%



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

July 31, 2006

The Honorable L. Paul Ingram  
Mayor, City of St. Marys  
418 Second Street  
St. Marys, WV 26170

Dear Mayor Ingram:

This letter, with Attachments 1 through 12 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$4,315,000, for a total project cost of \$4,315,000.

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

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

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 2003) (Accountant Copy)

Federal Building • 75 High Street • Suite 320 • Morgantown, WV 26705-7500  
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836  
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Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - RUS Policy regarding Use of Remaining Funds
- Attachment No. 12 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.5% interest rate and a monthly amortization factor of 0.00459, which provides for a monthly payment of \$19,806. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

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

2. Security - The loan must be secured by a statutory lien of equal priority with the City's outstanding bond issues, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27 which is mentioned later.
3. Users - This conditional commitment is based upon you providing evidence that there will be at least 1,113 bona fide users on the water system and 933 bona fide users on the sewer system when the project has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to the City's existing water and sewer systems which are to be partially replaced by the new system, at the time you request authorization to advertise the project for construction bids.

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

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. E-510, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to

obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, “Legal Services Agreement” is enclosed for your use.

7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:

a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).

b. Prior to loan closing, your accountant must certify that the accounts and records as required by your bond ordinance have been established and are operational.

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

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

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$300,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

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

a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, “Preliminary Title Opinion” may be used. In the case of your existing system or where the City already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.

- c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.
  - e. On the day of loan closing, the City's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the City has already acquired real property(s) (land or facilities), the City's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- State Department of Health
  - Department of Environmental Protection
10. Public Service Commission Approvals - You must obtain the following from the West Virginia Public Service Commission:
- a. A Certificate of Convenience and Necessity.
  - b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
  - c. Approval of financing for the project's proposed financing arrangements.
- The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.
11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider

analyzing your actual needs in detail before you obtain coverage in a specific amount.

- b. Workers' Compensation - In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. During the construction phase of your project, this maximum amount will be much greater than normal; therefore, it is our recommendation that you temporarily increase your coverage to an amount equal to the estimated highest monthly construction drawdown. Once construction is complete, you may decrease the amount of your coverage. Please note that the cost of the temporary increase in coverage is an eligible project cost.

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

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

## 12. Contract Documents, Final Plans and Specifications -

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

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

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

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

- (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the City and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.

- (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
- (3) Workers' Compensation - In accordance with applicable State laws.
- c. The contract documents and final plans and specifications must be submitted to RUS for approval.
- d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.
- 13. State Prevailing Wage Law - You should ensure that all requirements of Article 5A of the West Virginia State Prevailing Wage Law, "Wages for Construction of Public Improvements" are met during construction of the project.
- 14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of the City, over 30 day periods.

The City will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

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

- 15. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
  - Form RD 1940-1 - "Request for Obligation of Funds"
  - RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
  - Form RD 400-1 - "Equal Opportunity Agreement"
  - Form RD 400-4 - "Assurance Agreement"
  - Form AD 1047 - "Certification Regarding Debarment - Primary"
  - Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
  - FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
  - Certification of Compliance
  - Form RD 1942-46, "Letter of Intent to Meet Conditions"
- 19. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan docket. All the items listed must be included in the loan docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.

20. Upon receipt of the loan docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

The "RUS Policy Regarding Use of Remaining Funds" is attached for your information and use (Attachment No. 11). This policy should be adhered to when addressing the use of bid underrun funds, as well as any funds remaining after project construction is complete.

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

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

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

Sincerely yours,



for ROBERT M. STEPTOE III  
State Director

Enclosures

cc: Rural Development Specialist  
Parkersburg, WV

Phillip R. Postlewait, Jr., CPA  
Parkersburg, WV

Keith White, Esquire  
St. Marys, WV

Jackson Kelly  
Charleston, WV

S & S Engineers, Inc.  
Charleston, WV

**Water & Sewer System Improvements**  
**Project Construction Budget**

<b><u>PROJECT COST</u></b>	<b><u>RUS LOAN</u></b>	<b><u>TOTAL</u></b>
CONSTRUCTION	\$ 2,759,650	\$ 2,759,650
CONST. CONTINGENCY	\$ 275,965	\$ 275,965
LAND & RIGHTS	\$ 4,000	\$ 4,000
LEGAL FEES	\$ 10,000	\$ 10,000
BOND COUNSEL	\$ 30,500	\$ 30,500
ACCOUNTING	\$ 6,000	\$ 6,000
ENGINEERING FEES	\$ 566,000	\$ 566,000
Basic - \$		
Insp. - \$		
Special - \$		
EQUIPMENT	\$ 300,000	\$ 300,000
INTEREST	\$ 285,385	\$ 285,385
PROJECT CONTG.	\$ 77,500	\$ 77,500
<b>TOTAL</b>	<b>\$ 4,315,000</b>	<b>\$ 4,315,000</b>

**Rates - Water**

Available for general domestic, commercial, and industrial service.

First	3,000	gallons @	\$	5.73	per M gallons
Next	6,000	gallons @	\$	5.20	per M gallons
Next	6,000	gallons @	\$	4.41	per M gallons
Next	15,000	gallons @	\$	3.45	per M gallons
Over	30,000	gallons @	\$	2.53	per M gallons

**Minimum Charge**

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

5/8" x 3/4"	meter	\$	17.19	per month
3/4"	meter	\$	25.79	per month
1"	meter	\$	42.98	per month
1 1/2"	meter	\$	85.95	per month
2"	meter	\$	137.52	per month
3"	meter	\$	257.85	per month
4"	meter	\$	429.75	per month
6"	meter	\$	859.50	per month
8"	meter	\$	1,375.20	per month

Minimum Monthly Bill \$ 17.19 for 3,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, service to the customer will be discontinued. Service will not be restored until all past due bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

\$250.00

Reconnection Charge

\$20.00

Rates - Sewer

Available for general domestic, commercial, and industrial service.

First	3,000	gallons @	\$	7.93	per M gallons
Next	6,000	gallons @	\$	7.12	per M gallons
Next	6,000	gallons @	\$	5.97	per M gallons
Next	15,000	gallons @	\$	4.94	per M gallons
Over	30,000	gallons @	\$	3.59	per M gallons

Minimum Charge

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

5/8" x 3/4"	meter	\$	23.79	per month
3/4"	meter	\$	35.69	per month
1"	meter	\$	59.48	per month
1 1/2"	meter	\$	118.95	per month
2"	meter	\$	190.32	per month
3"	meter	\$	356.85	per month
4"	meter	\$	594.75	per month
6"	meter	\$	1,189.50	per month
8"	meter	\$	1,903.20	per month

Minimum Monthly Bill \$ 23.79 for 3,000 gallons

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

CITY OF ST MARYS - WATER DEPARTMENT  
USE AND INCOME ANALYSIS  
EXISTING SYSTEM

Blocking	# of Bills	Gallons	Minimum Bills \$	First 3,000	Next 6,000	Next 6,000	Next 15,000	Over 30,000	Bulk	TOTAL REVENUE
Min - 3/4	4808	5,409	\$ 82,889.92							
Min - 1	20	117	\$ 887.00							
Min - 2	89	1,034	\$ 15,745.88							
Min - 4	12	501	\$ 8,497.56							
0-3000	2,132	6,396		6,396						
4000-9000	5,584	30,839			30,839					
10000-15000	423	4,765				4,765				
16000-30000	123	2,545					2,545			
Over 30000	180	69,903						69,903		
Bulk		21,568							21,568	
Annual	13,371	143,077		6,396	30,839	4,765	2,545	69,903	21,568	
Proposed Rates			\$ 5.73	\$ 5.20	\$ 4.41	\$ 3.45	\$ 2.53	\$ 0.50		
Annual Revenues			\$ 108,020.36	\$ 36,649.08	\$ 160,362.80	\$ 21,013.65	\$ 8,780.25	\$ 176,854.59	\$ 10,784.00	\$ 522,464.73
										103.460128%
										\$ 540,542.68

	Proposed
Min - 3/4	17.24
Min - 1	44.35
Min - 2	176.92
Min - 4	708.13



CITY OF ST MARYS - COMBINED  
OPERATING BUDGET

OPERATING INCOME

Metered Sales	935,050	
Contract Sales-Sewer	174,392	
Bulk Sales-Water	10,784	
Penalties	19,297	
Other Income	6,115	
TOTAL OPERATING INCOME		<u>\$ 1,145,638</u>

NON OPERATING INCOME

Interest income		
TOTAL NON OPERATING INCOME		<u>\$ -</u>

TOTAL INCOME

\$ 1,145,638

EXPENSES

O & M	\$ 524,987	
Taxes	\$ 5,071	
TOTAL EXPENSES		<u>\$ 530,058</u>

INCOME AVAILABLE FOR D/S (A)

\$ 615,580

DEBT SERVICE

Existing Bond P & I (B)	\$ 226,320	
Proposed Bond P & I (B)	\$ 237,672	
TOTAL DEBT SERVICE		<u>\$ 463,992</u>

DEBT SERVICE RESERVE

Existing Debt Service Reserve	\$ 22,632	
Proposed Debt Service Reserve	\$ 23,767	
TOTAL DEBT SERVICE RESERVE		<u>\$ 46,399</u>

SURPLUS (DEFICIT)

\$ 105,189

DEBT COVERAGE (A/B)

133%

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

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

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney		Have	5
	Site Visit		S.I. 1780-2	RUS		Have	3
	Processing Conference	1	1780.39(a)	RUS		Have	3
	Environmental Report	2	1794	Applicant		Have	3
Exhibit H S.I. 1794-1	Categorical Exclusion	2	1794	RUS		Have	3
Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		Have	6
	Staff Engineer PER Review	1	1780.33(c)	RUS		Have	3
	Bill Analysis for existing system(s)	2	1780.33(c)	Applicant/ Engineer		Have	8
	Rate Tariff	2	1780.33	Applicant		Have	8
	Applicant's IRS Tax Number(TIN)	1	1780.33(g)	Applicant		Have	3
	Agency Determination on the Availability of "Other Credit" with Documentation	1	1780.7(d)	RUS		Have	3
	Documentation on Service Area	1	1780.11	RUS		Have	3
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		Have	1
	Letter of Conditions	7	1780.41 (a)(5)	RUS			3

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

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Certification Relative to Existing Users	1	LOC	Applicant			5
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

**Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants**

**§1780.80 General.**

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

**§1780.81 Policies related to use of bond counsel.**

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

**§1780.82 [Reserved]**

§1780.83 Bond transcript documents

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) Monthly payments. Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

**§1780.90 Multiple advances of Agency funds using temporary debt instruments.**

When none of the instruments described in §1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (a) The date from which each advance will bear interest;
- (b) The interest rate as determined by §1780.13;
- (c) A payment schedule providing for interest on outstanding principal at least annually; and
- (d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

**§§1780.91 - 1780.93 [Reserved]****§1780.94 Minimum bond specifications.**

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

- (a) **Type and denominations.** Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.
- (b) **Bond registration.** Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

RUS Instruction 1780

(c) **Size and quality.** Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) **Date of bond.** Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) **Payment date.** Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) **Extra payments.** Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (k) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) **Redemptions.** Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) **Additional revenue bonds.** Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) **Precautions.** The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in RUS Bulletins 1780-27 or 1780-28.  
**[Revision 2, 06/04/99]**

(4) **Defeasance provisions in loan or bond resolutions.** When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) **Assessment bonds.** When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) **Multiple debt instruments.** The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

Revision 2

RUS Instruction 1780

§1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§1780.96 - 1780.100 [Reserved]



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

October 7, 2008

The Honorable L. Paul Ingram  
Mayor, City of St. Marys  
418 Second Street  
St. Marys, WV 26170

Dear Mayor Ingram:

The pre-closing for the City's Rural Development (RD) loans will be held on November 3, 2008, at 10:00 AM at City Hall in St. Marys, West Virginia. The preconstruction conference will follow at 11:00 AM. The official loan closing date for the Water/Sewer Line Replacement Project will be November 5, 2008.

Reference is made to our Letter of Conditions dated July 31, 2008 and amended March 18, 2008. All of the requirements of these letters must be met and in addition, the loans must be closed in accordance with RUS Instruction 1780 and "Closing Guidelines for Community Facilities Loans to Public Bodies."

The RD loan of \$4,315,000 will be closed utilizing an interest rate of 4.5% resulting in a monthly payment of \$19,806. The RD loan of \$1,034,000 will be closed utilizing an interest rate of 4.375% resulting in a monthly payment of \$4,664. The City must establish a debt service reserve account for each loan at the West Virginia Municipal Bond Commission. These accounts must be funded on a monthly basis with an amount equal to 10% of the monthly payments until the equivalent of one annual installment on each loan is accumulated.

The following items should be submitted to our office as soon as possible but not later than October 27, 2008:

1. The City's engineer must provide a resume of the proposed inspector(s).
2. The City must provide a letter accepting the proposed inspector(s).
3. The City's accountant must certify that the accounts and records as required by the City's bond ordinance have been established and are operational.
4. The City must provide evidence that it has acquired insurance and bond coverage in accordance with Item 11 of the Letter of Conditions. The City's position fidelity coverage must be increased to at least the amount of the estimated highest monthly construction drawdown. The additional premium for this

P.O. Box 303 Parkersburg, WV 26102-0303  
Phone: (304) 420-6664 • Fax: (304) 420-6876 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

coverage is an eligible project expense and may be reimbursed from project funds. Once construction is complete, the position fidelity coverage may be decreased to not less than the amount of one annual installment on your Rural Development loans.

5. The City must furnish evidence that it provides State Workers' Compensation Insurance. A certificate of good standing will be satisfactory.
6. An advance copy of the first drawdown including the bank loan payoff effective November 5, 2008.
7. The West Virginia Department of Highways permit. At the very latest, this permit must be available on November 3, 2008.

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

1. The City's attorney will need to provide Form RD 442-22 "Opinion of Counsel Relative to Rights of Way," showing no exceptions. This form should be dated November 5, 2008.
2. The City's attorney must furnish a Form RD 1927-10 "Final Title Opinion," on all property being acquired and for all existing property owned by the Municipality/District in connection with the water and sewer systems. A single final title opinion may be provided if it includes an attachment which adequately addresses each of the parcels identified in the preliminary title opinions. The opinion should be dated November 5, 2008.
3. The City must furnish evidence that the West Virginia Public Service Commission has approved the project.

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

Sincerely,



VIRGINIA M. McDONALD  
Rural Development Specialist

Enclosure

cc: State Director  
USDA – Rural Development  
Morgantown, WV

Ashok Sanghavi, P.E.  
S & S Engineers, Inc.  
Wheeling, WV

Keith White, Esquire  
St. Marys, WV

Ryan White, Esquire  
Jackson Kelly, PLLC  
Charleston, WV

Annjeanette Vealey, CPA  
Smith, Cochran & Hicks, PLLC  
Charleston, WV

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

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

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

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

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

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

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

LOAN RESOLUTION  
(Public Bodies)

COPY

A RESOLUTION OF THE \_\_\_\_\_ City Council

OF THE \_\_\_\_\_ City of St. Marys

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

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

WHEREAS, it is necessary for the \_\_\_\_\_ City of St. Marys  
(Public Body)

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

ONE MILLION THIRTY-FOUR THOUSAND AND XX / 100 DOLLARS (\$1,034,000.00)

pursuant to the provisions of \_\_\_\_\_ Chapter 8 Article 20, West Virginia Code \_\_\_\_\_ ; and

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

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

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

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ 0.00

under the terms offered by the Government; that Mayor

and City Recorder of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Yeas 5 Nays 0 Absent 1

IN WITNESS WHEREOF, the City Council of the

City of St. Marys has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this 7th day of April, 2008

City of St. Marys

(SEAL)

By L. Paul Ingram  
L. Paul Ingram

Title Mayor

Attest:  
Linda K. Wilson

Linda Wilson  
Title Recorder

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as Recorder of the City of St. Marys

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

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

held on the 7th day of April 2008; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of November 5, 2008,  
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
rescinded or amended in any way.

Dated, this 5th day of November 2008

  
\_\_\_\_\_  
Linda Wilson

Title Recorder

cc: Art Boggs  
Senator Boley

Approved on 09/19/06 as written.

**MINUTES OF THE SEPTEMBER 5, 2006** regular session of the common council of The City of St. Marys, WV, held in council chambers.

Mayor L. Paul Ingram called the regular session of the common council to order at 7:00 P.M.

Everyone stood for the **PLEDGE OF ALLEGIANCE**.

Attending were: Mayor L. Paul Ingram, Acting Cty Mgr Ron Cokeley, Cty Rec Linda K. Wilson, Chief of Police Bill Stull, City Attorney Keith White, Councilpersons: Rick McCullough, Charlie Knight, Holly West, Jody Haddox, Paula Wince and Mike Hendricks.

**MINUTES:**

Charlie Knight moved to dispense with the reading of the minutes of the regular session of August 15, 2006, and approve them as written. Copies of those minutes had been distributed to members of Council prior to tonight's meeting.

Holly West seconded.  
Motion passed unanimously.

**CORRESPONDENCE:** Letters from:

1. Dorothy Elder re: Handicap parking space in front of her house at 715 Sixth Street.

Rick McCullough moved to approve the handicap space.  
Paula Wince seconded.  
Motion passed unanimously.

Dorothy went on to say that there is an erosion problem there also.

2. Frances Marie Davis re: Handicap parking space at 704 Fifth Street.

Charlie Knight moved to approve the handicap space.  
Paula Wince seconded.  
Motion passed unanimously.

These spaces need to be painted blue and signs need to be erected.

3. Cities of Ravenswood and Ripley re: MOVMA dinner meeting on September 13, 2006 at 6:00 p.m. at Cedar Lakes Dining Hall.

Mayor Ingram asked that anyone interested in attending, please notify Cty Rec. She would call in the head-count.

**AFFIDAVITS OF PUBLICATION:** (See Page 739)

Mayor Ingram read the affidavits of publication as follows:

1. DUI Checkpoint...**LEADER**...July 29 & August 5, 2006...**ORACLE**...August 2 & 9, 2006

Mike Hendricks moved to spread the affidavits of publication, as read, into the minutes.

Jody Haddox seconded.

Motion passed unanimously.

## **OLD BUSINESS:**

### City Manager's Report

Cty Mgr reported that there was nothing new on the following items on the agenda:

1. Water & Sewer line-replacements, water storage, street paving
3. Greenspan Project
4. County Water PSD Project
5. WVDHHR Deficiencies re: Water Storage Facilities – We are continuing to work on the deficiencies.
6. Replacement of: water meters, hand-held meter reading devices & software
7. Emergency Planning and safety issues

Cty Mgr reported on the following:

2. Sewer Upgrades & New Treatment Plant – Cty Mgr reported that the new lines should be in by the end of the week.

Cty Mgr reported that he had received a quote from an independent contractor to mill the two-block section of the alleys that had been torn up from the sewer upgrades. The estimate for milling only, was \$11,000.00. Cty Mgr was hoping to have another quote by Friday.

8. Bids for paving Washington Street – Cty Mgr reported that he hoped to have quotes by Monday.

10. Report regarding Recycle Department – Cty Mgr stated that he would like to hire a second part time person in recycling and he wanted to see if PCSWA would pay for the person through a grant or something.

There were no objections.

9. Run at County Park – Charlie Knight stated that we need to have the County Commission come in or we should go to them. We dug the ditch for the drainage, but the County has done nothing. Water goes around the ditch, not into it. Charlie said that maybe they would meet with us and just go look at it.

Mike Hendricks wondered if we needed a committee.

Mayor Ingram stated that he would be going to the County Commission meeting tomorrow. Maybe he could talk to them after the meeting to see when we could get together. Charlie Knight and Rick McCullough volunteered to talk to them, too.

### Chief of Police's Report

There was nothing to report.

### City Recorder's Report

Cty Rec had nothing to report.

City Attorney's Report

Cty Atty had nothing to report.

Mayor's Report

A. Update re: Comprehensive Plan/Zoning – There was nothing new.

Committee Reports

There was nothing to report.

**NEW BUSINESS:**

Discuss hiring a part time police officer – Chief Stull

Chief Stull reported that a former officer from Sistersville was interested in a part time position. A part time officer would save money. We only have one part time officer, but he isn't available very often. There would be no expense to the City. The individual has his uniform and his own weapon.

Discussion ensued regarding:

- The amount of help that we get from the Sheriff's Department
- Jurisdiction and responsibility of various law enforcement entities

Holly West moved to approve hiring the second part time officer for the police department.  
Paula Wince seconded.

Voting for the motion were Holly West, Paula Wince and Jody Haddox.  
Voting against the motion were Rick McCullough, Charlie Knight and Mike Hendricks.

Mike Hendricks stated that he voted against the motion because he wasn't sure full time officers would be in favor of the decrease in their overtime.

Chief Stull stated that the officers would be glad to reduce the amount of overtime required of them.

Motion was tied.  
Mayor Ingram voted against the motion.  
Motion was denied.

Discuss increasing sewer rates by half of what the final rates will be – Mayor

Mayor Ingram wanted to wait until later to bring this up.

Discuss increasing street fee – Mayor

Mayor Ingram wanted to wait until later to bring this up.

Discuss new phone system for city facilities

Cty Rec first explained that when we first decided to put a new roof on city hall, we discovered that we would first have to remove the HVAC unit from the roof. Before we could do that, we would have to put a new HVAC unit on the ground. Before we could do that, we had to do electrical upgrades. The roof project turned into a 3-part project.

Our preliminary estimates were \$76,000.00. We went to COMVEST and asked to do a lease-purchase for the \$76,000.00. We have signed the agreements for that amount and have begun making payments. As it turns out, the total project will cost much less. We will have several thousand dollars left over once the project is complete. If we want to use those funds to do additional electrical work or phone upgrades, now is the time to do so. Our payments won't change whether we are retiring \$50,000.00 or \$76,000.00.

Cty Rec explained that our phone system is antiquated. She had talked to the phone company to get some preliminary information. The first estimate was that the new system would increase our annual bill by a little over \$3300.00. Cty Rec was looking at an automated system whereby callers would be directed to the correct department/person. If that person was not in the office, the voice mail would pick up and receive the information.

After much discussion, Cty Rec was instructed to get back with the phone company to answer some questions and to refine the proposal.

Appoint Audit Procurement Committee – Must be Finance Officer and one member of governing body

Paula Wince moved to appoint the Cty Rec and Rick McCullough as the Audit Procurement Committee. Jody Haddox seconded. Motion passed unanimously.

Consider Resolution authorizing Mayor to sign USDA documents

The following resolution was offered:

**WHEREAS**, Council needs to be informed that certain legal documents need to be formally adopted by Council and signed by the Mayor and Recorder, and

**WHEREAS**, those forms are referenced under number 15 of the RUS Letter of Conditions dated July 31, 2006, and

**WHEREAS**, the forms are as follows:

1. Form RD 1940-1 - "Request for Obligation of Funds" (previously executed)
2. RUS Bulletin 1780-27 "Loan Resolution (Public Bodies)"
3. Form RD 400-1 - "Equal Opportunity Agreement"
4. Form RD 400-4 - "Assurance Agreement"
5. Form RD 1047 - "Certification Regarding Debarment - Primary"
6. Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
7. FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans"
8. Certification of Compliance
9. Form RD 1942-46 - "Letter of Intent to Meet Conditions"

**NOW THEREFORE BE IT RESOLVED**, this resolution shall be passed by Council, formally adopting the documents and authorizing the Mayor and Recorder to sign on behalf of the City of St. Marys, West Virginia, thereby entering the forms into the record.

Dated this 5<sup>th</sup> day of September 2006.

Signed by L. Paul Ingram, Mayor. Attested by Linda K. Wilson City Recorder

Jody Haddox moved to approve the resolution.

Paula Wince seconded.

Motion passed unanimously.

Consider General Fund Budget Revision #1 FY07 – Bring Fund Balance into new budget.

Cty Rec explained that this revision would bring the fund balance/carry over into the new budget. This will increase the FY07 budget by \$369,256. Of that amount, \$111,726 has already been allocated. The remaining \$257,530 will be put in a line item for City Hall Capital Improvements.

Mike Hendricks moved to approve the budget revision as presented.

Jody Haddox seconded.

Motion passed unanimously.

Approval of Bills

The following bills were submitted for approval:

General Fund	\$3,104.66
Special Levy Fund	201.59
Water Fund	3,350.81
Sewer Fund	1,291.80
Refuse Fund	<u>219.39</u>
Total All Funds	\$8,168.25

Charlie Knight moved to approve the bills for payment.

Mike Hendricks seconded.

Motion passed unanimously.

**ADJOURNMENT:**

Jody Haddox motioned to adjourn.

Motion was seconded.

Motion passed unanimously.

Meeting adjourned at 8:04 p.m.

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, TO AMEND ARTICLE 931, SECTIONS 931.01 AND 931.03, OF THE CODIFIED ORDINANCES OF THE CITY OF ST. MARYS, WEST VIRGINIA

WHEREAS, The Common Council of The City of St. Marys, West Virginia, has deemed it necessary and desirable for the health and welfare of the inhabitants of The City of St. Marys that there be acquired and constructed certain additions, betterments and improvements to the waterworks and sewerage portions of the existing combined waterworks and sewerage system of The City of St. Marys and that such additions, betterments and improvements should be financed through the issuance of revenue bonds; and,

WHEREAS, In order to generate sufficient revenues for the payment of proper and reasonable expenses of operations, maintenance, repairs, replacements, improvements, additions, betterments and extensions of the waterworks and sewerage portions of such combined waterworks and sewerage system, and for the payment of all sums required to pay the principal and interest of all revenue bonds and to meet all applicable reserve requirements as the same become due, an increase in the rates and charges for the use of and services rendered by the waterworks and sewerage portions of such combined waterworks and sewerage system is necessary;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ST. MARYS that Article 931, Sections 931.01 and 931.03, of the Codified Ordinances of The City of St. Marys, West Virginia, shall be amended as follows, to be effective forty-five (45) days from passage, all as provided for by applicable provisions of the *Code of West Virginia, 1931, as amended*, that all provisions inconsistent therewith be repealed, and that due notice hereof be provided by publication and maintenance of this ordinance by the City Recorder.

**First**, That Article 931, Sections 931.01 and 931.03, of the *Codified Ordinances of The City of St. Marys, as amended*, be further amended by establishing a schedule of rates and charges for the use of and services rendered by the waterworks and sewerage portions of the combined waterworks and sewerage system of The City of St. Marys, all of said sections as hereby amended to read as follows:

“931.01        WATER RATES AND CHARGES

For the operation of the water system of The City of St. Marys and the payment of proper and reasonable expenses of operations, maintenance, repairs, replacements, improvements, additions, betterments and extensions of the water system and for the payment of all sums required to pay the principal and interest of all revenue bonds and to meet all applicable reserve requirements as the same become due, there is hereby established a schedule of just and equitable rates and charges for the use of The City of St. Marys, West Virginia, which schedule of rates and charges, based upon the metered amount of water supplied to the premises served, except as otherwise specified herein, shall be:

(a) The initial schedule of rates and charges to take effect forty-five (45) days from passage of this ordinance for all water services other than fire protection services shall be as follows:

(1) Rate in Metered Gallons Used Per Monthly Billing Period:

<u>Gallons</u>	<u>Rate per 1,000 Gallons</u>
First 3,000	\$3.95
Next 6,000	3.58
Next 6,000	3.03
Next 15,000	2.37
All Over 30,000	1.74

(2) Flat Rate. Premises or installations that receive unmetered water service shall be charged a flat rate equal to the minimum charge per month for the size water meter that would be required to serve the premises or installation if the water service was metered.

(3) Minimum Charge. No bill will be rendered for less than the following amounts according to the size of each meter installed (for customers with multiple meters, the minimum charge will be the sum of the minimum charges for each of the individual meters), to-wit:

<u>Meter Size (in inches)</u>	<u>Minimum Monthly Fee</u>
5/8	\$ 11.85
3/4	17.78
1	29.63
1-1/4	41.48
1-1/2	59.25
2	94.80
3	177.75
4	296.25
6	592.50
8	948.00
10	1,516.80

(4) Connection Charge. A minimum connection charge of three hundred fifty dollars (\$350.00) shall be made for new customers of the water facilities. When the cost of labor, materials and equipment for any connection exceeds the sum of three hundred fifty dollars (\$350.00), the balance of said cost shall be paid by the customer before the connection is completed.

- (5) Delayed Payment Penalty; Termination of Service for Non-Payment of Bill; Disconnection and reconnection charges. Charges for water and sewer service, and other municipal services, are billed on a single monthly bill. If the entire amount of the monthly bill for water, sewer and other municipal services is not timely paid in full, a delayed payment penalty as set forth below will be applied. If a bill remains unpaid for more than thirty days after the billing date, water service to the delinquent customer is subject to termination and to the imposition of termination and reconnection charges as set forth below.
- A. On all bills not paid in full within ten (10) days of the billing date, ten percent (10%) will be added to the net amount shown thereon.
  - B. If any bill is not paid in full within thirty (30) days of the billing date, water service to the premises served will be discontinued and a disconnection charge of twenty dollars (\$20.00) will be added to the balance due from the delinquent customer. Water service will not be restored thereafter until all past due bills have been paid in full and all accrued penalties have been paid plus a reconnection charge of twenty dollars (\$20.00); provided, that no more than one disconnection charge and one reconnection charge shall be imposed for each termination of service for non-payment of a bill.
- (6) Recovery of Bank Charges. If a bank or other financial institution returns a customer's check to the City due to insufficient funds in such customer's account and charges a fee to the City for such service, then the fee charged will be added to the account of the customer whose check is returned.
- (7) Leak Adjustment. The rate to be used in adjusting customer bills that reflect unusually high usage that can be attributed to eligible leakage on the customer's side of the meter, pursuant to the applicable rules of the Public Service Commission of West Virginia, shall be as follows:

\$0.75 per 1,000 gallons.

(b) The initial facility standards and requirements, and the applicable schedule of rates and charges to take effect forty-five (45) days from passage of this ordinance for private fire protection services shall be as follows:

(1) Permit required; facility requirements; costs. No private fire protection service shall be provided except pursuant to a permit issued by the City Manager. The City Manager shall have the right to establish reasonable standards and requirements for all fire protection facilities and shall have the discretionary power to refuse to issue a permit for private fire protection if it is determined that water in sufficient volumes and at sufficient pressures to meet all applicable requirements for the private fire protection being sought cannot be provided by the waterworks portions of the combined waterworks and sewerage system of The City of St. Marys or if the proposed fire protection facilities do not meet all applicable requirements of The City of St. Marys, the Public Service Commission of West Virginia or any other governmental agency, as well as any applicable provisions of the Code of West Virginia, as amended. All connections, pipes, meters and other facilities extending from the water main to the premises to be served for the purpose of transporting, regulating or measuring water for fire protection purposes shall be separate from any connections, pipes, meters and facilities used to transport water for regular domestic service or other purposes and shall be installed entirely at the customer's expense. Water supplied through fire protection facilities shall be used only for fighting fires and the periodic testing of the fire protection facilities.

(2) Rates.

Hydrants (Service Connection Size) Monthly Charge (per hydrant)

4 inch	\$11.04
6 inch	\$24.84
8 inch or larger	\$44.16

Sprinkler System/Hose Connections Monthly Charge (per connection)  
(Service Connection Size)

4 inch	\$17.62
6 inch	\$39.65
8 inch or larger	\$70.48

(c) The initial schedule of rates and charges to take effect upon substantial completion of the additions, betterments and improvements to the waterworks portions of the City's combined waterworks and sewerage system or October 1, 2009, whichever shall first occur, shall be as follows:

(1) Rate in Metered Gallons Used Per Monthly Billing Period:

<u>Gallons</u>	<u>Rate per 1,000 gallons</u>
First 3,000	\$6.02
Next 6,000	5.46
Next 6,000	4.62
Next 15,000	3.61
All Over 30,000	2.65

(2) Flat Rate. Premises or installations that receive unmetered water service shall be charged a flat rate equal to the minimum charge per month for the size water meter that would be required to serve the premises or installation if the water service was metered.

(3) Minimum Charge. No bill will be rendered for less than the following amounts according to the size of each meter installed (for customers with multiple meters, the minimum charge will be the sum of the minimum charges for each of the individual meters), to-wit:

<u>Meter Size (in inches)</u>	<u>Minimum Monthly Fee</u>
5/8	\$ 18.06
3/4	27.09
1	45.15
1-1/4	63.21
1-1/2	90.30
2	144.48
3	270.90
4	451.50
6	903.00
8	1,444.80
10	2,311.68

(4) Connection Charge. A minimum connection charge of three hundred fifty dollars (\$350.00) shall be made for new customers of the water facilities. When the cost of labor, materials and equipment for any connection exceeds the sum of three hundred fifty dollars (\$350.00), the balance of said cost shall be paid by the customer before the connection is completed.

(5) Delayed Payment Penalty; Termination of Service for Non-Payment of Bill; Disconnection and Reconnection charges. Charges for water and sewer service, and other municipal services, are billed on a single monthly bill. If the entire amount of the

monthly bill for water, sewer and other municipal services is not timely paid in full, a delayed payment penalty as set forth below will be applied. If a bill remains unpaid for more than thirty days after the billing date, water service to the delinquent customer is subject to termination and to the imposition of termination and reconnection charges as set forth below.

- A. On all bills not paid in full within ten (10) days of the billing date, ten percent (10%) will be added to the net amount shown thereon.
  - B. If any bill is not paid in full within thirty (30) days of the billing date, water service to the premises served will be discontinued and a disconnection charge of twenty dollars (\$20.00) will be added to the balance due from the delinquent customer. Water service will not be restored hereafter until all past due bills have been paid in full and all accrued penalties have been paid plus a reconnection charge of twenty dollars (\$20.00); provided, that no more than one disconnection charge and one reconnection charge shall be imposed for each termination of service for non-payment of a bill.
- (6) Recovery of Bank Charges. If a bank or other financial institution returns a customer's check to the City due to insufficient funds in such customer's account and charges a fee to the City for such service, then the fee charged will be added to the account of the customer whose check is returned.
- (7) Leak adjustment. The rate to be used in adjusting customer bills that reflect unusually high usage that can be attributed to eligible leakage on the customer's side of the meter, pursuant to the applicable rules of the Public Service Commission of West Virginia, shall be as follows:

\$0.75 per 1,000 gallons.

(d) The initial facility standards and requirements, and the applicable schedule of rates and charges for private fire protection purposes to take effect upon substantial completion of the additions, betterments and improvements to the waterworks portions of the City's combined waterworks and sewerage system or October 1, 2009, whichever shall first occur, shall be as follows:

(1) Permit required; facility requirements; costs. No private fire protection service shall be provided except pursuant to a permit issued by the City Manager. The City Manager shall have the right to establish reasonable standards and requirements for all fire protection facilities and shall have the discretionary power to refuse to issue a permit for private fire protection if it is determined that water in sufficient volumes and at sufficient pressures to meet all applicable requirements for the private fire protection being sought cannot be provided by the waterworks portions of the combined waterworks and sewerage system of The City of St. Marys or if the proposed fire protection facilities do not meet all applicable requirements of The City of St. Marys, the Public Service Commission of West Virginia or any other governmental agency, as well as any applicable provisions of the Code of West Virginia, as amended. All connections, pipes, meters and other facilities extending from the water main to the premises to be served for the purpose of transporting, regulating or measuring water for fire protection purposes shall be separate from any connections, pipes, meters and facilities used to transport water for regular domestic service or other purposes and shall be installed entirely at the customer's expense. Water supplied through fire protection facilities shall be used only for fighting fires and the periodic testing of the fire protection facilities.

(2) Rates.

Hydrants (Service Connection Size) Monthly Charge (per hydrant)

4 inch	\$16.84
6 inch	\$37.89
8 inch or larger	\$67.36

Sprinkler System/Hose Connections Monthly Charge (per connection)  
(Service Connection Size)

4 inch	\$ 26.87
6 inch	\$ 60.46
8 inch or larger	\$107.48

931.03 SEWER RATES AND CHARGES

For the operation of the sewer system of The City of St. Marys and the payment of proper and reasonable expenses of operations, maintenance, repairs, replacements, improvements, additions, betterments and extensions of the sewer system and for the payment of all sums required to pay the principal and interest of all revenue bonds and to meet all applicable

reserve requirements as the same become due, there is hereby established a schedule of just and equitable rates and charges for the use of The City of St. Marys, West Virginia, which schedule of rates and charges, based upon the metered amount of water supplied to the premises served, except as otherwise specified herein, shall be:

- (1) Metered Rate. The rate per 1,000 gallons of water supplied to the premises in excess of 3,000 gallons per monthly billing period shall be ... \$6.03.
- (2) Flat Rate. Premises or installations that receive sewer service but lack metered water service shall be charged a flat rate equal to the minimum water charge per month for the size water meter that would be required to serve the premises or installation if metered water service were provided.
- (3) Minimum Charge. No metered rate bill will be rendered for less than \$18.09 per monthly billing period or portion thereof.
- (4) Delayed Payment Penalty; Termination of Water Service for Non-Payment of Bill; Disconnection and Reconnection charges. Charges for water and sewer service, and other municipal services, are billed on a single monthly bill. If the entire amount of the monthly bill for water, sewer and other municipal services is not timely paid in full, a delayed payment penalty as set forth below will be applied. If a bill remains unpaid for more than thirty days after the billing date, water service to the delinquent customer is subject to termination and to the imposition of termination and reconnection charges as set forth below.
  - A. On all bills not paid in full within ten days of the billing date, ten percent (10%) will be added to net amount shown thereon.
  - B. If any bill is not paid in full within thirty days of the billing date, water service to the premises served will be discontinued and a disconnection charge of twenty dollars (\$20.00) will be added to the balance due from the delinquent customer. Water service will not be restored thereafter until all past due bills have been paid in full and all accrued penalties have been paid plus a reconnection charge of twenty dollars (\$20.00); provided, that no more than one disconnection charge and one reconnection charge shall be imposed for each termination of service for non-payment of a bill.

- (5) Recovery of Bank Charges. If a bank or other financial institution returns a customer's check to the City due to insufficient funds in such customer's account and charges a fee to the City for such service, then the fee charged will be added to the account of the customer whose check is returned.
  
- (6) Leak Adjustment. If an adjustment is made to a customer's water bill or bills that reflect unusually high usage that can be attributed to eligible leakage on the customer's side of the water meter under circumstances where the leaked water did not enter the City's sewer system, the customer's corresponding sewer bill or bills shall also be recalculated and adjusted to exclude any charges attributable to water that is determined to have leaked on the customer's side of the water meter and not entered in to the City's sewer system."

**Second,** That any other ordinance inconsistent with the provisions hereof is hereby repealed to the extent of such inconsistency.

**Third,** That the foregoing amendments to Article 931, Section 931.03, of the Codified Ordinances of The City of St. Marys, West Virginia, shall become effective forty-five (45) days after passage.

**Fourth,** That the City Recorder is hereby authorized and directed to publish a copy of this ordinance and/or notice thereof as may be required by applicable law, in a duly qualified newspaper or newspapers, in the City of St. Marys, West Virginia, and the same shall constitute notice to all persons concerned that the foregoing ordinance herein stated has been introduced at a meeting of the City Council on February 20, 2008, and that the City Council contemplates the adoption thereof, including the amendment of the rates and charges therein set forth, as just and equitable rates or charges for use of, and the service rendered by, the sewer system and works of The City of St. Marys, West Virginia, and that any person interested may appear before the Council on the 18th day of March, 2008, at 7:00 p.m., in the City Council Chambers, on the first floor of the Municipal Building, 418 Second Street, in The City of St. Marys, and present to the Council any protest or objection he may have to the rates or charges proposed.

**Fifth,** That a copy of the proposed ordinance is and shall be made available for public inspection in the office of the City Recorder, 418 Second Street, St. Marys, West Virginia, between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Wednesday and Friday, and between the hours of 8:00 a.m. and 12:00 noon on Thursday, excluding holidays observed by the City.

THE CITY OF ST. MARYS, WEST VIRGINIA

By   
Its Mayor

Attest:

  
Recorder

First Reading: February 20, 2008

Second Reading: March 18, 2008

Date of Adoption: March 18, 2008



1600 LAIDLEY TOWER • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130  
www.jacksonkelly.com

DIRECT TELEPHONE: (304) 340-1214

DIRECT TELECOPIER: (304) 340-1080

E-Mail: [snchambers@jacksonkelly.com](mailto:snchambers@jacksonkelly.com)

State Bar No. 694

April 1, 2008

**VIA HAND DELIVERY**

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission  
of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

RECEIVED  
2008 APR -1 PM 4:08  
WEST VIRGINIA SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: City of St. Marys, West Virginia  
Adoption of Ordinance Increasing Sewer Rates  
RFA 08-037S

Dear Ms. Squire:

Enclosed for filing in the above case are thirteen copies of the Affidavit of Publication evidencing publication of the post-adoption Public Notice of Proposed Ordinance to Change Water and Sewer Rates by Municipality published on March 19 and March 26, 2008, in the St. Marys Oracle. The original Affidavit of Publication is being filed today in PSC Case No. RFA 08-036/W (City of St. Marys – Adoption of Ordinance Increasing Water Rates).

Please advise if you have any questions.

Yours truly,

Stephen N. Chambers

SNC/dmb  
Enclosures

- cc: Tom Painter, City Manager (w/enc.)
- Linda K. Wilson, City Recorder (w/enc.)
- D. Keith White, Esq., City Attorney (w/enc.)
- Angie Vealey, CPA (w/enc.)
- John Auville, Esq. (w/enc.)

{C1337751.1}

INVOICE AND AFFIDAVIT OF PUBLICATION



# St. Marys Oracle

Ph. (304) 684-2424 • Fax (304) 684-2426  
P.O. Box 27, St. Marys, WV 26170

WEST CENTRAL PUBLISHING  
FEDERAL I.D. NO. 55-06700561  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, to wit:

I, Randa Gregg, being first duly sworn upon my oath, do depose and say:

- that I am General Manager of The St. Marys Oracle, a Democratic newspaper,
- that I have been duly authorized to execute this affidavit,
- that such newspaper is regularly published weekly for at least fifty weeks during the calendar year, in the municipality of St. Marys, Pleasants County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within St. Marys and Pleasants County
- that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
- that such newspaper is circulated to the general public at a definite price or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

**Public Notice of Proposed Ordinance**

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
Two	March 19 and 26, 2008

**PUBLICATION CHARGES \$943.16**

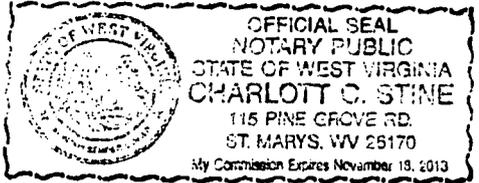
**CERTIF-BILL TO**

**City of St. Marys  
418 Second Street  
St. Marys, WV 26170**

(signed) Randa Gregg  
NOTARIZATION

Taken, sworn to and subscribed before me this 26<sup>th</sup>  
day of March, 2008

Charlott C. Stine  
Notary Public



**PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT TO:**  
P.O. BOX 27, ST. MARYS, WV 26170  
*11/15/08 4-15-08*

**PUBLIC NOTICE OF PROPOSED ORDINANCE TO CHANGE WATER AND SEWER RATES BY MUNICIPALITY**

NOTICE is hereby given that The City of St. Marys, West Virginia (City), a public utility, has adopted by Ordinance on March 18, 2008, tariffs containing new, increased or otherwise changed rates, tolls, and charges for providing water and sewer service to approximately 1,101 customers at St. Marys and vicinity in the County of Pleasants.

The proposed new increased or changed rates and charges for water service will occur in two phases. The first phase of new, increased or changed water rates and the single and only phase of new, increased or otherwise changed sewer rates will become effective on the 2<sup>nd</sup> day of May, 2008, unless otherwise ordered by the Public Service Commission. The second phase of new, increased or changed water rates will become effective on the completion of certain pending additions, betterments and improvements to the waterworks portions of the City's combined waterworks and sewerage system, or on October 1, 2009, whichever shall first occur, unless otherwise ordered by the Public Service Commission.

The first phase of the new, increased or changed water rates will produce approximately \$108,439 annually in additional gross revenue, an average increase of approximately 40.50%. The average monthly bill for customers will vary depending upon the amount of metered water consumption. The City does not distinguish among residential classes. The City's only resale customer is Route 16 Water Corporation. The examples set forth below illustrate the impact of the first phase of the new, increased or changed water rates and charges at various monthly usage levels:

**WATER RATES AND CHARGES - PHASE ONE**

**A. VOLUMETRIC RATES**

**1. Phase One Rates in Metered Gallons Used per Monthly Billing Period**

Gallons	Rate per 1,000 Gallons
Up to 2,000	\$3.95
2,000 - 4,000	\$3.58
4,000 - 6,000	\$3.03
Over 6,000	\$2.37
All Over 30,000	\$1.74

**2. Illustrations of Potential Rate Impact at Various Usage Levels**

	Phase 1 Rates	(\$ Increase Over Prior Rates	(% Increase Over Prior Rates
Minimum Charge (5/8" meter)	\$ 11.85	\$ 3.42	40.69%
30 gallons (typical residential)	\$ 17.22	\$ 4.98	40.51%
100 gallons	\$ 38.38	\$ 10.51	40.69%
1,000 gallons	\$ 75.21	\$ 21.62	40.31%
100,000 gallons	\$ 208.08	\$ 60.02	40.39%
1,000,000 gallons	\$1,774.86	\$510.02	40.31%

**B. MINIMUM MONTHLY WATER CHARGE PER METER**

Minimum monthly charges for each meter serving a customer will also be added, increased or changed as follows in phase one:

Meter Size in Inches	Minimum Fee Phase One	(\$ Change From Prior Rates	(% Change From Prior Rates
(N) 5/8	\$ 11.85	\$ -0	-0%
3/4	\$ 17.78	\$ 9.33	110%
1	\$ 28.63	\$ 7.69	30%
(N) 1-1/4	\$ 41.48	\$ -0	-0%
1-1/2	\$ 59.25	\$ 10.80	21%
2	\$ 94.80	\$ 8.07	9.3%
3	\$ 177.75	(\$17.45)	(9.8%)
4	\$ 298.25	(\$50.88)	(15%)
(N) 6	\$ 592.50	\$ -0	-0%
(N) 8	\$ 948.00	\$ -0	-0%
(N) 10	\$1,518.00	\$ -0	-0%

(N) signifies a new rate or provision not previously in the City's tariffs.

**C. OTHER RATES AND CHARGES**

The following phase one rates and charges or other provisions are new, increased or changed:

**1. CONNECTION CHARGE**

Phase One	(\$ Increase	(% Increase
\$350.00	\$100.00	40%

**2. DISCONNECTION CHARGE.** The City's tariff previously provided that if water service was terminated for non-payment, service would not be restored until all past due charges and penalties were paid in full, plus a reconnection charge of twenty dollars (\$20.00). While the reconnection charge remains unchanged, beginning with the phase one rates and charges, a disconnection charge of twenty dollars (\$20.00) will be imposed when service is terminated for non-payment and service will not be restored until all past due charges and penalties and both disconnection and reconnection charges are paid.

**3. LEAK ADJUSTMENT.** The current leak adjustment rate of \$0.33 per 1,000 gallons will increase \$0.40 (114%) to \$0.75 per 1,000 gallons under phase one rates and charges.

**4. RECOVERY OF BANK CHARGES.** Beginning with phase one rates and charges, if a bank or other financial institution returns a customer's check to the City due to insufficient funds in the customer's account and imposes a fee on the City for such service, the bank fee will be added to the balance of the account of the customer whose check is returned.

**D. PRIVATE FIRE PROTECTION SERVICES**

The phase one tariff contains the following rates and charges for private fire protection services, all of which are new.

Hydrants (Service Connection Size)	Monthly Charge (per hydrant)
4 inch	\$11.04
6 inch	\$24.84
8 inch or larger	\$44.10

Sprinkler Systems/Inlet Connections (Service Connection Size)	Monthly Charge (per connection)
4 inch	\$17.62
6 inch	\$39.65
8 inch or larger	\$70.48

**WATER RATES AND CHARGES - PHASE TWO**

The second phase of the new, increased or changed water rates will produce approximately \$1.75 annually in additional gross revenue, an average increase of approximately 52.50%

**A. VOLUMETRIC RATES**

Water Rates by Metered Gallons Used per Monthly Billing Period:

Gallons	Rate per 1,000 Gallons
First 3,000	\$6.02
Next 6,000	\$5.48
Next 6,000	\$4.62
Next 15,000	\$3.61
All Over 30,000	\$2.65

Illustrations of Potential Rate Impact at Various Usage Levels:

	Phase Two Rates	(\$ Increase Over Phase 1)	(% Increase Over Phase 1)
Minimum Charge (5/8" meter)	\$ 18.06	\$ 6.21	52.4%
4,500 gallons (typical residential)	\$ 26.25	\$ 9.03	52.4%
9,000 gallons	\$ 55.44	\$ 19.08	52.5%
13,500 gallons	\$ 114.64	\$ 39.43	52.4%
18,000 gallons	\$ 318.19	\$ 109.33	52.4%
22,500,000 gallons	\$2,703.19	\$928.33	52.3%

**B. MINIMUM MONTHLY WATER CHARGE PER METER**

Minimum monthly charges for each meter serving a customer under phase two will be as follows:

Meter Size in Inches	Minimum Fee Phase Two	(\$ Increase From Phase One)	(% Increase From Phase One)
5/8	\$ 18.06	\$ 6.21	52.4%
3/4	\$ 27.09	\$ 9.31	52.4%
1	\$ 45.15	\$ 15.52	52.4%
1 1/4	\$ 63.21	\$ 21.73	52.4%
1 1/2	\$ 90.30	\$ 31.05	52.4%
2	\$ 144.48	\$ 48.68	52.4%
3	\$ 270.90	\$ 93.15	52.4%
4	\$ 451.50	\$ 155.25	52.4%
5	\$ 903.00	\$310.50	52.4%
8	\$1,444.80	\$496.80	52.4%
10	\$2,311.68	\$794.88	52.4%

**C. PRIVATE FIRE PROTECTION SERVICES**

The phase two tariff will contain the following rates and charges for private fire protection services:

Hydrants* (size of connection)	Monthly Charge (per hydrant)	(\$ Increase-Phase 2)	(% Increase-Phase 2)
4 inch	\$16.84	\$5.80	52.5%
6 inch	\$37.89	\$13.05	52.5%
8 inch or larger	\$67.36	\$23.20	52.5%

Sprinkler Systems Hose Connections	Monthly Charge (per connection)	(\$ Increase-Phase 2)	(% Increase-Phase 2)
4 inch	\$ 28.87	\$ 9.25	52.5%
6 inch	\$ 60.48	\$20.81	52.5%
8 inch or larger	\$107.48	\$37.00	52.5%

**III. SEWER RATES AND CHARGES**

The new, increased or changed sewer rates will produce approximately \$190,201 annually in additional gross revenue, an average increase of approximately 44.85%. The City does not distinguish among customer classes. The examples set forth below illustrate the impact of the new, increased or changed sewer rates and charges at various monthly water usage levels:

**A. MINIMUM BILL**

All customers that receive metered water service and use up to, but not exceeding, 3,000 gallons of metered water per month will pay a minimum monthly charge for sewer service of \$18.09.

**B. FLAT RATE**

Premises or installations that receive sewer service but lack metered water service shall be charged a flat rate equal to the minimum water charge per month for the size water meter that would be required to serve the premises or installation if metered water service were provided.

**C. UNIFORM VOLUMETRIC RATE**

All metered customers who use in excess of 3,000 gallons of water per month, shall pay an amount equal to the minimum bill and an additional \$6.03 for each 1,000 metered gallons of water (or portion thereof) used per month in excess of 3,000 gallons.

Illustrations of Potential Rate Impact at Various Monthly Metered Water Usage Levels:

	New Rates	(\$ Increase)	(% Increase)
Minimum Charge (1" 3,000 gallons)	\$ 18.09	\$ 4.38	31.9%
4,500 gallons (typical residential)	\$ 27.14	\$ 7.25	36.4%
9,000 gallons	\$ 60.30	\$ 18.41	43.9%
13,500 gallons	\$ 150.75	\$ 62.96	71.7%
18,000 gallons	\$ 603.00	\$ 355.31	143.4%
22,500,000 gallons	\$6,030.00	\$3,910.31	193.6%

**OTHER RATES AND CHARGES**

The following rates and charges or other provisions are new, increased or changed:

**1. DISCONNECTION CHARGE.** The City's tariff previously provided that if water service was terminated for non-payment of sewer charges, service would not be restored until all past due charges and penalties were paid in full, plus a reconnection charge of twenty dollars (\$20.00). While the reconnection charge remains unchanged, a disconnection charge of twenty dollars (\$20.00) will also be imposed when service is terminated for non-payment of sewer charges and service will not be restored until all past due charges and penalties and both disconnection and reconnection charges are paid.

The potential rate impacts shown above are based on selected average volumes of metered water usage. The actual impact of the new, increased or changed rates described above on individual customers may be more or less than the impacts shown above. The rates and charges described above are subject to change (increases or decreases) by the Public Service Commission upon its review of the ordinance and the rates and charges described above. The Public Service Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

(1) Any customer aggrieved by the changed rates or charges who presents to the Public Service Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Public Service Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Public Service Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, WV 25323.

A complete copy of the ordinance is available for public inspection at the offices of the City Recorder, Municipal Building, 418 Second Street, St. Marys, West Virginia, between 8:00 a.m. and 4:00 p.m. on Mondays, Tuesdays, Wednesdays and Fridays and between 8:00 a.m. and noon on Thursdays.

The proposed rates are also available for public inspection at the Office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, Charleston, WV.

Linda Wilson, City Recorder  
3-19-26 O

cc: Art Boggs  
Senator Boley

Approved on 03/04/08 as written.

**MINUTES OF THE FEBRUARY 20, 2008** regular session of the common council of The City of St. Marys, WV, held in council chambers.

Mayor L. Paul Ingram called the regular session of the common council to order at 7:00 P.M.

Everyone stood for the **PLEDGE OF ALLEGIANCE**.

Attending were: Mayor Pro-tem Rick McCullough, Cty Rec Linda Wilson, Cty Mgr Tom Painter, Cty Atty Keith White, Sergeant Jenkins, Councilpersons: Charlie Knight, Holly West, J. B. Phillips, Mike Hendricks, and Bill Israel.

Absent: Mayor L. Paul Ingram and Chief of Police Bill Stull

**MINUTES:**

Bill Israel moved to dispense with the reading of the minutes of the regular session of February 5, 2008, and approve them as written. Copies of those minutes had been distributed to members of Council prior to tonight's meeting.

J. B. Phillips seconded.  
Motion passed unanimously.

**AFFIDAVIT OF PUBLICATION:** (See Page 741)

Mayor Pro-tem read the affidavit of publication as follows:

1. Notice of Special Election – Official Ballot...**ORACLE**: Jan. 30 and Feb. 6, 2008

Mike Hendricks moved to spread the affidavit of publication, as read, into the minutes.  
Bill Israel seconded.  
Motion passed unanimously.

**OLD BUSINESS:**

City Manager's Report

There was nothing to report on the following items on the agenda:

2. Sewer Upgrades & New Treatment Plant
3. Greenspan Project
4. WVDHHR Deficiencies re: Water Storage Facilities – We continue to work on the deficiencies.
5. Replacement of: water meters, hand-held meter reading devices & software
6. Emergency Planning and safety issues
7. Washington Street Paving
8. Specifications re: use of City's dumpsters

The following items were reported upon:

1. Water & Sewer line-replacements, water storage, street paving – Cty Mgr explained that we should be able to have the second reading on the rate-increase ordinances on March 18, 2008. After that reading we should be able to bid out the project. Cty Mgr had been told that the right-of-way from the refinery for the tank site had been signed by Mr. Heater and it was being sent by overnight mail. We should have it tomorrow.

### Chief of Police's Report

Chief Stull was absent. Sergeant Jenkins was present on behalf of Chief Stull.

Sergeant Jenkins submitted a written monthly report to Council.

Sergeant Jenkins introduced a proposal for consideration in which the four full time officers would work twelve hour shifts instead of 8 hour shifts. In this proposal, the officers would be scheduled to work 84 hours in every pay period instead of 80 hours. The officers have agreed that they would be paid a straight salary for 80 hours for those 84 hours. Anything over 84 hours would become overtime. Each officer would be giving up around \$2000 per year. They would make that up with the grants that are received for extra DUI patrols. At the end of each year, anything that was saved in the overtime line item would be carried over and placed into a capital line item to hopefully help purchase new vehicles in a more timely manner. Sergeant Jenkins submitted a document that the officers were willing to sign that would give the City permission to pay them for 80 hours when they actually worked 84 hours.

It was pointed out that the personnel policy would need to be changed. That would require two readings of the adopting ordinance.

Cty Atty wanted a chance to look over the document and to talk to the Department of Labor to make sure there were no problems with this proposal.

### City Recorder's Report

1. Need to begin Budget Discussions

J. B. Phillips moved to have the first budget session on Wednesday, February 27, 2008 at 4:30 p.m.

Bill Israel seconded.

Motion passed unanimously.

### City Attorney's Report

There was nothing to report on the following items on the agenda:

1. Collection of B&O taxes from CSX job in 1999 – Forms sent – Need amount of contract.
2. Suit filed against MCS SPECTRUM in 2000 – 2001.
3. Ordinance re: Regulation of truck trailer parking along Route 2 – 1<sup>st</sup> Reading (02/03/04)
4. Completion of Annexation of both Stewart Properties (Bd. of Ed.)
  - 4/16/06 – CA reported that Co. Comm. re-scheduled public hearing for June 7, 2006.
  - 6/21/06 – CA reported that public hearing had not been re-scheduled, yet.
5. Consent order to cap and re-drill two water wells (See 05/16/06 agenda)
6. Rules governing yard sale signs, etc. (See 07/18/06 agenda)
7. PEIA past due bill of \$141,789.34 (See 02/20/07 agenda)
8. Agreement re: \$25,000 contribution to Alumni Center (See 08/07/07 agenda)
9. Annexation of Marina (See 09/17/07 agenda)

10. Ordinance prohibiting city employees from also holding city/other elected positions

Cty Atty reported on the following:

#5 Cty Atty reported that the letter to Shell Oil had been prepared to have the two water wells tested. He wanted Claude Marra to look over the letter. Once he approved the letter, Cty Atty would get a copy of the letter to Council.

#4 & #9 dealing with annexations, Cty Atty reported that these were on the County Commission agenda on April 16, 2008.

#10 Cty Atty reported that he had talked to other cities in the area and found out that many cities thought they had a prohibition against their employees holding elected positions. Some cities actually have ordinances while others could find nothing in their codes. Cty Atty had copies of Parkersburg's and Ripley's code prohibiting this. Cty Atty wanted to contact some others before bringing copies to Council.

Mayor's Report

There was nothing to report.

Committee Reports

There was nothing to report.

**NEW BUSINESS:**

1. Ordinance re: Water and Sewer Rate Increases – 1<sup>st</sup> Reading

MPT Rick McCullough read the ordinance by title only:

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, TO AMEND ARTICLE 931, SECTIONS 931.01 AND 931.03, OF THE CODIFIED ORDINANCES OF THE CITY OF ST. MARYS, WEST VIRGINIA

J. B. Phillips moved to approve the ordinance upon 1<sup>st</sup> Reading.

Mike Hendricks seconded.

Motion passed unanimously.

2. Discussion re: Application of gravel on top of the fill...to the left of the marina entrance

Mike Hendricks reported this was no longer necessary. We could remove this from the agenda.

3. Discussion re: City's contribution to WVBF

Cty Rec reported that the City gave \$100 to the fishing tournament and \$1000 to the festival.

Mike Hendricks had forgotten that we gave that much and stated there was no need for further discussion.

There was some question as to whether we received the launch fees from last year's tournament. Cty Rec did not remember. She would check it out.

4. Call Special Session for Feb. 25, 2008 to canvass election returns

J. B. Phillips moved to call a special session for the purpose of canvassing the results of the Special Levy Election that was held on February 19, 2008. The special session would be on Monday, February 25, 2008 at 4:00 p.m. in council chambers.

Mike Hendricks seconded the motion.  
Motion passed unanimously.

5. Vision Service Plan 2-year Renewal – No change in rates

J. B. Phillips moved to approve the 2-year renewal.  
Bill Israel seconded.  
Motion passed unanimously.

6. Executive Order – Anything that goes out to bid must be pre-approved by Council

This was on the agenda as a reminder. No action was necessary.

7. Consider Resolution to extend Line of Credit (\$300,000 Water and Sewer line Project) for 13 months

Mike Hendricks moved to approve the resolution to extend the terms of the Line of Credit.  
Charlie Knight seconded.  
Motion passed unanimously.

8. Approval of equipment purchase for SMVFD – 2 Quotes received

The VFD was asking for bids for a TFT Blitz Fire package. The following bids were received:

Finley Fire Equipment - \$2395.00 each

Dill's Fire & Safety Equipment - \$3400.00 each

A grant of \$2000 had been received from the Community Foundation towards this purchase.

Mike Hendricks moved to approve the low bid from Finley Fire.  
Bill Israel seconded.  
Motion passed unanimously.

9. Doug Poling re: Water backup on Maple Street

On behalf of himself and other residents on Maple Street, Doug Poling expressed his concerns regarding the recent sewer backup in several basements. Mr. Poling stated that he sustained damage on two occasions. Others stated they had sustained damages as well. They all felt that the City had a liability in the recovery of damages.

When told that they could install check valves in their sewer lines or they could install sump pumps, the residents again felt that the City should foot the bills.

Cty Atty explained that our insurance carrier determined that the City was not negligent with regard to this problem and therefore no payment would be made on behalf of the City. Cty Atty advised the residents to seek

advice from an attorney if they wished to pursue that avenue. He represented the City and therefore could not give advice to the residents.

Cty Mgr explained that the sewer lines in that area are very old terra cotta tile. After running a sewer camera in the lines, it was discovered that the lines were separated and broken. Replacement of this sewer line has been slated as top priority on the upcoming project. We were working diligently to get this project to construction. Replacement of Maple Street sewer lines would be the first item to go to construction. Hopefully, this will go to construction early this spring.

The residents stated that they never had these problems until the City upgraded the sewer system.

Other suggestions were that we borrow the money to fix the problem now. We could get reimbursed when the project was funded. Someone asked about the possibility of installing a temporary sewer line and pump (to go from the manhole on Maple Street to the manhole on Cherry Street).

Cty Mgr would contact the engineer and ask him about the suggestions and also ask him if he had any other suggestions to help the residents.

Doug Poling asked if the City would pick up the flood-damaged items that have been laying in his yard since the flooding.

Cty Mgr told Mr. Poling to call when the items were out at the curb. The City would pick it up.

One resident asked for a copy of the written recommendations/plans for the Maple Street sewer line.

When asked what the City would do if this happens again, Council did not know if they could do anything.

#### 10. Approval of Bills

The following bills were submitted for approval:

General Fund	\$4,792.14
Special Levy Fund	523.90
Water Fund	4,372.36
Sewer Fund	955.41
Refuse Fund	<u>2,012.24</u>
Total All Funds	\$12,656.05

Mike Hendricks moved to approve the bills for payment.

Holly West seconded the motion.

Motion passed unanimously.

#### **ADJOURNMENT:**

Mike Hendricks motioned to adjourn.

Bill Israel seconded.

Motion passed unanimously.

Meeting adjourned at 8:25 p.m.

cc: Art Boggs  
Senator Boley

Approved on 04/15/08 as written.

**MINUTES OF THE MARCH 18, 2008** regular session of the common council of The City of St. Marys, WV, held in council chambers.

Mayor L. Paul Ingram called the regular session of the common council to order at 7:00 P.M.

Everyone stood for the **PLEDGE OF ALLEGIANCE**.

Attending were: Mayor L. Paul Ingram, Cty Rec Linda Wilson, Cty Mgr Tom Painter, Cty Atty Keith White, Chief Stull, Councilpersons: Rick McCullough, Charlie Knight, J. B. Phillips, Mike Hendricks, and Bill Israel.

Absent: Councilperson Holly West.

**PUBLIC HEARING:** Mayor Ingram opened the public hearing and asked for comments.

Ms. Arnett stated that she had read where 15.3% of the population was under the poverty level. She did not know where the money was going to come from to pay the increases. People in St. Marys were not working in St. Marys. There were no jobs in St. Marys. Senior citizens were on fixed incomes.

Jim Rymer complained about the condition of his water coming from the leak in the bathtub in his apartment at Hadley Manor. He brought in a sample of the water and he also had pictures of the leak in the bathtub. He was going to have the samples tested.

Peggy Coffman spoke to the condition of the old reservoir in behind the refinery.

Mr. Painter spoke of the age of our system. We have a lot of problems. We have work to do. Mr. Painter went on to say that the reservoir that Ms. Coffman spoke of was built in 1924. Cty Mgr explained that our rates were some of the lowest rates in the state. Even after our rate increase we will be around the middle. We have consistently kept our rates low. Now we are paying the price. We need good infrastructure to attract jobs and businesses. We need more businesses to help take the burden off of individual households. Cty Mgr explained that we do not qualify for grants.

Mayor Ingram closed the public hearing and opened the regular session.

**APPROVAL OF MINUTES:**

J. B. Phillips moved to dispense with the reading of the minutes of the regular session of March 4, 2008, and of the budget sessions of March 6 and March 13, 2008, and approve them as written. Copies of those minutes had been distributed to members of Council prior to tonight's meeting.

Mike Hendricks seconded.  
Motion passed unanimously.

**AFFIDAVIT OF PUBLICATION:** (See Page 742)

Mayor Ingram read the affidavit of publication as follows:

1. Notice of Proposed Ordinance...**ORACLE:** February 27 and March 5, 2008

Mike Hendricks moved to spread the affidavits of publication, as read, into the minutes.

J. B. Phillips seconded.

Motion passed unanimously.

## **OLD BUSINESS:**

### City Manager's Report

There was nothing to report on the following agenda items:

2. Sewer Upgrades & New Treatment Plant
3. Greenspan Project
4. WVDHHR Deficiencies re: Water Storage Facilities – We continue to work on the deficiencies.
5. Replacement of: water meters, hand-held meter reading devices & software
6. Emergency Planning and safety issues
7. Washington Street Paving
8. Specifications re: use of City's dumpsters

The following items were reported upon:

1. Water & Sewer line-replacements, water storage, street paving – Cty Mgr explained that all the paperwork with USDA had been completed.

Jackson Kelly will submit the Rule 42 to PSC in the next two days. Hopefully, upon PSC approval, the construction bids will have been received and we will be ready to go to construction. Cty Mgr praised the office and city employees who worked hard to get this project ready.

The Maple Street project should be approved within the next 2 – 3 days. Since this was declared an emergency we can bypass the bid process. Contractors will be given two weeks to produce quotes.

### Chief of Police's Report

Chief Stull had nothing to report.

### City Recorder's Report

Cty Rec had nothing to report.

### City Attorney's Report

There was nothing to report on the following agenda items:

1. Collection of B&O taxes from CSX job in 1999 – Forms sent – Need amount of contract.
2. Suit filed against MCS SPECTRUM in 2000 – 2001.
3. Ordinance re: Regulation of truck trailer parking along Route 2 – 1<sup>st</sup> Reading (02/03/04)
4. Completion of Annexation of both Stewart Properties (Bd. of Ed.)
  - 4/16/06 – CA reported that Co. Comm. re-scheduled public hearing for June 7, 2006.
  - 6/21/06 – CA reported that public hearing had not been re-scheduled, yet.
6. Rules governing yard sale signs, etc. (See 07/18/06 agenda)
8. Agreement re: \$25,000 contribution to Alumni Center (See 08/07/07 agenda)

9. Annexation of Marina (See 09/17/07 agenda)

Cty Atty reported on the following:

5. Consent order to cap and re-drill two water wells (See 05/16/06 agenda) – Cty Atty reported that the letter was finished. It would be sent out on Monday or Tuesday of next week.

7. PEIA past due bill of \$141,789.34 (See 02/20/07 agenda) – Cty Atty explained that the Legislature didn't help us. We are still required to use PEIA. Several cities are considering filing suit. PEIA has a double rate system. Cty Atty had asked Cty Rec to get figures together to see what our benefits would be and what our costs would be if we became members of PEIA. Cty Atty recommended we begin paying the current premium due. We should begin with March's premium. No action was taken.

There was considerable concern regarding the fact that St. Marys City Council had never elected to provide health insurance to retired employees.

Rick McCullough asked what would happen if we opted out of PERS.

Cty Atty felt that without the PERS affiliation, we would not be obligated to provide health insurance.

Another option would be to become members of PEIA. Our rates would drop dramatically if that were the case.

10. Ordinance prohibiting city employees from also holding city/other elected positions – Cty Atty reported that he had two or three more ordinances coming and wanted to wait until he had them all.

Mayor's Report

There was nothing to report.

Committee Reports

Charlie Knight reminded everyone of the Make It Shine cleanup dates...April 5 and April 12, 2008. On April 5 the focus would be on Middle Island Creek Road and on the Old Pike Road. On April 12 the focus would be on State Routes through town as well as the downtown area. There would be no personal property involved. Anyone interested in volunteering should meet at the Marina at 9:00 a.m. The project would be no cost to the City. Landfill fees are being paid by the DEP. DEP is also providing the gloves and the bags. The City will provide the dumpster.

On a similar subject, Charlie Knight asked that people remove their signs once their events were finished. Also, signs should not be posted on utility poles.

**NEW BUSINESS:**

1. Ordinance re: Water and Sewer Rate Increases – 2<sup>nd</sup> Reading

Mayor Ingram read the ordinance by title only:

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, TO AMEND ARTICLE 931, SECTIONS 931.01 AND 931.03, OF THE CODIFIED ORDINANCES OF THE CITY OF ST. MARYS, WEST VIRGINIA

J. B. Phillips moved to approve the ordinance upon 2<sup>nd</sup> Reading.  
Bill Israel seconded.  
Motion passed unanimously.

2. Approval of SMPD 80-hour pay period for 84 hours worked

Cty Atty had not heard from Wage and Hour.

3. Request from Cty Rec to attend WVGFOA meeting in April

Mike Hendricks moved to approve Cty Rec's attendance to the April meeting of the WVGFOA.  
Rick McCullough seconded.  
Motion passed unanimously.

4. Request from Chief Stull to attend training March 26 & 27, 2008

Bill Israel moved to approve Chief Stull's attendance to training in March.  
Rick McCullough seconded.  
Motion passed unanimously.

5. Discussion re: Loan/grant to old WVBF group for \$3041.00 should be written off

Before this could be considered, Cty Rec was asked to try and get a copy of any financial statements from the old group. They were supposed to repay the grant if the WV Bass Festival ever showed a profit.

6. Budget Revisions: General (Fund 1); Special Levy (Fund 4); Community Committee (Fund 36)

The budget revision for the Community Committee should be deleted. The grant for \$1500.00 in that revision should be added to the General Fund revision. It was not given to the Community Committee. It was intended for the group that worked on lighting in the downtown area.

The budget revision for the Special Levy Fund was to appropriate the \$2000 grant that they received for purchase of equipment for the Fire Department.

Rick McCullough moved to approve the budget revisions as revised.  
Mike Hendricks seconded.  
Motion passed unanimously.

7. Discussion re: Purchase of computer for SMPD

Chief Stull had obtained three quotes. The quote that meets or exceeds the requirements was going to cost \$1500.00. The existing budget has \$2000 in it for the purchase of software. No software purchase is going to be made in this fiscal year. Chief Stull would ask that the money be moved from the software line item, to the capital equipment line item.

Cty Rec stated that she would make that change in the proposed general fund revision, approved earlier tonight.

J. B. Phillips moved to move the money in order to purchase a computer for the SMPD.  
Bill Israel seconded.  
Motion passed unanimously.

8. Discussion re: Theft of curbside recycled materials

Garbage is considered abandoned property and therefore there is no expectation of privacy. Cty Atty thought we could come up with something regarding the recyclables.

On a similar subject, Mike Hendricks asked if we were still remitting fees collected to the entities that were bringing their recycled materials to The City of St. Marys.

Cty Rec reported that we were still processing their recyclables and giving them all the proceeds.

Mike Hendricks asked Cty Mgr to talk to the Solid Waste Authority and propose that we keep a portion of the proceeds. We are doing the work and we are not getting anything for it.

9. Discussion re: Spring Clean up

Cty Rec reported that currently, the refuse department could not afford it. We may want to take a look at this again in the fall. Every clean up costs the City between three and four thousand dollars.

Charlie Knight suggested we contact DEP and see if they would come into town and do a clean up like they do in Wood County. He would contact them tomorrow and find out.

10. Discussion re: Marina drainage problem

Mike Hendricks commented that if we are going to try and get the marina parking lot paved, we should address the drainage problem as well.

Cty Mgr would contact the Army Corps of Engineers and see if they would draw up some plans for proper drainage.

11. Approval of Bills

The following bills were submitted for approval:

General Fund	\$ 5,784.24
Special Levy Fund	2,636.15
Water Fund	2,217.59
Sewer Fund	963.33
Refuse Fund	<u>2,046.14</u>
Total All Funds	\$13,647.45

Mike Hendricks moved to approve the bills for payment.

Bill Israel seconded the motion.

Motion passed unanimously.

Mayor Ingram thanked our accountant, Angie Vealey, for being in attendance for the public hearing.

**ADJOURNMENT:**

Mike Hendricks motioned to adjourn.  
Rick McCullough seconded.  
Motion passed unanimously.

Meeting adjourned at 8:24 p.m.



# St. Marys Oracle

Ph. (304) 684-2424 • Fax (304) 684-2426  
P.O. Box 27, St. Marys, WV 26170

WEST CENTRAL PUBLISHING  
FEDERAL I.D. NO. 55-06700561  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, to wit:

- I, Randa Gregg, being first duly sworn upon my oath, do depose and say:
- that I am General Manager of The St. Marys Oracle, a Democratic newspaper,
  - that I have been duly authorized to execute this affidavit,
  - that such newspaper is regularly published weekly for at least fifty weeks during the calendar year, in the municipality of St. Marys, Pleasants County, West Virginia.
  - that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within St. Marys and Pleasants County
  - that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
  - that such newspaper is circulated to the general public at a definite price or consideration;
  - that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
  - and that the annexed notice described as follows:

### Public Notice of Proposed Ordinance

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
Two	February 27 and March 5, 2008

PUBLICATION CHARGES	\$79.70
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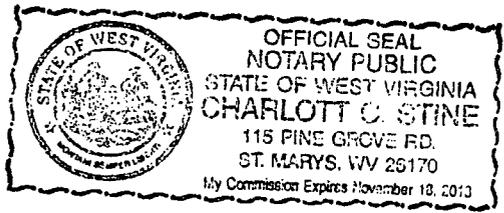
CERTIF-BILL TO

City of St. Marys  
418 Second Street  
St. Marys, WV 26170

(signed) Randa Gregg  
NOTARIZATION

Taken, sworn to and subscribed before me this 5<sup>th</sup>  
day of March, 20 08

Charlott C. Stine  
Notary Public



PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT TO:  
P.O. BOX 27, ST. MARYS, WV 26170

Minutes: 3-18-08

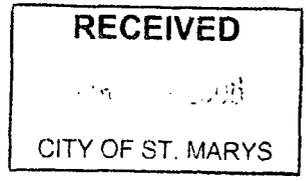
RECEIVED  
2008 MAR 24 PM 4:06  
W VA PUBLIC SERVICE COMMISSION  
SECRETARY'S OFFICE

### PUBLIC NOTICE OF PROPOSED ORDINANCE TO CHANGE WATER AND SEWER RATES, ST. MARYS, WEST VIRGINIA

NOTICE is hereby given that on February 20, 2008, a proposed ordinance was introduced before the Common Council of The City of St. Marys to amend Article 931, Sections 931.01 and 931.03, of the Codified Ordinances of The City of St. Marys, West Virginia, for the purpose of adopting new tariffs containing increased rates, tolls, and charges for furnishing water and sewer services to the customers of the combined waterworks and sewerage system of The City of St. Marys, including rates, tolls and charges for private fire hydrants and sprinkler systems and other private fire protection services. The proposed ordinance, which is to become effective forty-five (45) days from its adoption, further provides for a second, additional increase in rates, tolls, and charges for water service and private fire protection service to become effective upon substantial completion of certain additions, betterments and improvements to the waterworks portions of the City's combined waterworks and sewerage system.

The proposed ordinance, titled "AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA, TO AMEND ARTICLE 931, SECTIONS 931.01 AND 931.03, OF THE CODIFIED ORDINANCES OF THE CITY OF ST. MARYS, WEST VIRGINIA," will be on the agenda, and considered for adoption, at a meeting of the Common Council of The City of St. Marys to be held in the City Council Chambers, Municipal Building, 418 Second Street, St. Marys, West Virginia, on March 18, 2008, beginning at 7:00 p.m., at which time and place the public may appear and be heard on the proposed ordinance. A complete copy of the proposed ordinance is available for public inspection at the offices of the City Recorder, Municipal Building, 418 Second Street, St. Marys, West Virginia, between 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Wednesday and Friday and between 8:00 a.m. and 12:00 noon on Thursday.

Linda Wilson, City Recorder. 2-37,3-5-0



2.6

**THE CITY OF ST. MARYS**  
**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**  
**SERIES 2008 A AND SERIES 2008 B**  
**(UNITED STATES DEPARTMENT OF AGRICULTURE)**

**BOND ORDINANCE**

**Table of Contents**

<b>Subject</b>	<b>Page</b>
<b>ARTICLE I</b>	
<b>STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS</b>	
Section 1.01 Authority for this Ordinance	1
Section 1.02 Findings	2
Section 1.03 Bond Legislation Constitutes Contract	4
Section 1.04 Definitions	4
<b>ARTICLE II</b>	
<b>AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT</b>	
Section 2.01 Authorization of Acquisition and Construction of the Project	12
<b>ARTICLE III</b>	
<b>AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT</b>	
Section 3.01 Authorization of Bonds	13
Section 3.02 Terms of Bonds	13
Section 3.03 Execution of Bonds	13
Section 3.04 Negotiability, Transfer and Registration	14
Section 3.05 Bonds Mutilated, Destroyed, Stolen or Lost	15
Section 3.06 Bonds not to be Indebtedness of the Issuer	14
Section 3.07 Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	15

Section 3.08	Form of Bonds	15
	FORM OF SERIES 2008 A BOND	16
	FORM OF SERIES 2008 B BOND	24
Section 3.09	Sale of Bonds	32
<b>ARTICLE IV</b>		
<b>[RESERVED]</b>		
33		
<b>ARTICLE V</b>		
<b>FUNDS AND ACCOUNTS; SYSTEM REVENUES</b>		
<b>AND APPLICATION THEREOF</b>		
Section 5.01	Establishment of Funds and Accounts with Depository Bank	34
Section 5.02	Establishment of Funds and Accounts with Commission	34
Section 5.03	System Revenues; Flow of Funds	34
<b>ARTICLE VI</b>		
<b>APPLICATION OF BOND PROCEEDS</b>		
Section 6.01	Application of Bond Proceeds	39
Section 6.02	Disbursements From the Bond Construction Trust Fund	39
<b>ARTICLE VII</b>		
<b>ADDITIONAL COVENANTS OF THE ISSUER</b>		
Section 7.01	General Covenants of the Issuer	40
Section 7.02	Bonds not to be Indebtedness of the Issuer	40
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	40
Section 7.04	Rates and Charges	40
Section 7.05	Sale of the System	41
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	42
Section 7.07	Parity Bonds	43
Section 7.08	Books; Records and Audit	45
Section 7.09	Rates	47

Section 7.10	Operating Budget and Monthly Financial Report	48
Section 7.11	Engineering Services and Operating Personnel	48
Section 7.12	No Competing Franchise	49
Section 7.13	Enforcement of Collections	49
Section 7.14	No Free Services	50
Section 7.15	Insurance and Construction Bonds	50
Section 7.16	Mandatory Connections	51
Section 7.17	Completion of Project; Permits and Orders	52
Section 7.18	Compliance with Letter of Conditions and Law	52
Section 7.19	Statutory Mortgage Lien	52
Section 7.20	Contracts; Public Releases	53

**ARTICLE VIII  
INVESTMENT OF FUNDS**

Section 8.01	Investment of Funds	54
--------------	---------------------	----

**ARTICLE IX  
DEFAULT AND REMEDIES**

Section 9.01	Events of Default	55
Section 9.02	Remedies	55
Section 9.03	Appointment of Receiver	56

**ARTICLE X  
PAYMENT OF BONDS**

Section 10.01	Payment of Bonds	58
---------------	------------------	----

**ARTICLE XI  
MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	59
Section 11.02	Bond Legislation Constitutes Contract	59
Section 11.03	Severability of Invalid Provisions	59
Section 11.04	Headings, Etc.	59
Section 11.05	Conflicting Provisions Repealed; Prior Ordinances	59

Section 11.06	Covenant of Due Procedure, Etc.	60
Section 11.07	Statutory Notice and Public Hearing	60
Section 11.08	Effective Date	61
	SIGNATURES	61
	CERTIFICATION	62
	EXHIBIT A	63
	EXHIBIT B	64

THE CITY OF ST. MARYS

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS AND SEWERAGE PORTIONS OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE); AND NOT MORE THAN \$1,034,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); 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 COUNCIL OF THE CITY OF ST. MARYS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 20 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 City of St. Marys (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State.

B. The Issuer presently owns and operates a public combined waterworks and sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the waterworks and sewerage portions of the existing public combined waterworks and sewerage system of the Issuer, as described in Exhibit A hereto, and all appurtenant facilities (collectively, the “Project”) (the existing public combined waterworks and sewerage system of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the “System”), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Government and Recorder of the Issuer.

C. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the United States Department of Agriculture/Rural Utilities Service (the “Government”).

D. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture) (the “Series 2008 A Bonds”), in the total aggregate principal amount of not more than \$5,000,000, and the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture) (the “Series 2008 B Bonds”) in the total aggregate principal amount of \$1,034,000 (collectively, the “Series 2008 Bonds”) initially to be represented by two bonds, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, on the Series 2008 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 2008 A Bonds Reserve Account and the Series 2008 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 2008 Bonds 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 2008 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 System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that the Series 2008 Bonds be sold to the Government pursuant to the terms and provisions of the Letter of Conditions.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 Bonds as to liens, pledge, source of and security for payment, being the (i) Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000 (the "Series 1996 B Bonds"); (ii) Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000 (the "Series 1998 A Bonds"); (iii) Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), dated October 22, 2003, issued in the original principal amount of \$425,000 (the "Series 2003 A Bonds"); and (iv) Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund), dated July 10, 2006, issued in the original principal amount of \$1,581,250 (the "Series 2006 A Bonds"). The Series 1996 B Bonds, the Series 1998 A Bonds, the Series 2003 A Bonds and the Series 2006 A Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2008 Bonds shall be issued on a parity with each other and with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds have been met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2008 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest on the Prior Bonds and the Series 2008 Bonds and to make all payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances.

I. The Issuer has complied with all requirements of West Virginia law and the Letter of Conditions relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2008 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia (the "PSC") by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2008 Bonds or such final order will not be subject to appeal.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 2008 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 2008 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 8, Article 20 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

"Authorized Officer" means the Mayor 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" means the Issuer, which shall so serve by the Recorder of the Issuer.

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“Bonds” means, collectively, the Series 2008 Bonds, the Prior 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 date upon which there is an exchange of the Series 2008 Bonds for all or a portion of the proceeds of the Series 2008 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.

“Consulting Engineers” means S&S Engineers, Inc., Charleston, West Virginia, 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 1.02E hereof to be a part of the cost of acquisition and construction of the Project.

“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 City Council of the Issuer, as it may now or hereafter be constituted.

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

“Government” means the United States of America, United States Department of Agriculture, Rural Utilities Service, which is expected to be the original purchaser of the Series 2008 Bonds.

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

“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 City of St. Marys, a municipal corporation and political subdivision of the State of West Virginia, in Pleasants County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Letter of Conditions” means, collectively, the Letter of Conditions of the Government dated July 31, 2006, the amended Letter of Conditions of the Government dated March 18, 2008, and all amendments thereto.

“Mayor” means the Mayor of the Issuer.

“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 repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, 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

“Prior Bonds” means, collectively, the Series 1996 B Bonds, the Series 1998 A Bonds, the Series 2003 A Bonds and the Series 2006 A Bonds.

“Prior Ordinances” means, collectively, the ordinances of the Issuer authorizing the issuance of the Prior Bonds.

“Project” means the Project as described in Section 1.02B hereof and Exhibit A hereto.

“PSC” means the Public Service Commission of West Virginia and any successor to the functions thereof.

“PSC Order” means, collectively, the final order or orders of the PSC, granting the Issuer a certificate of convenience and necessity to acquire and construct the Project and approving the financing for the Project.

“Qualified Investments” means and includes any of the following:

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

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

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

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

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

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

(h) The 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.

“Recorder” means the Recorder of the Issuer.

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

“Registrar” means the Bond Registrar.

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

“Reserve Accounts” means, collectively, the respective Reserve Accounts created for the Prior Bonds and the Series 2008 Bonds.

“Reserve Requirements” means, collectively, the respective amounts required to be on deposit in the Reserve Accounts.

“Revenue Fund” means the Revenue Fund created by the Prior Ordinances and continued hereby.

“Series 1996 B Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000.

“Series 1998 A Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000.

“Series 2003 A Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), dated October 22, 2003, issued in the original principal amount of \$425,000.

“Series 2006 A Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund), dated July 10, 2006, issued in the original principal amount of \$1,581,250.

“Series 2008 Bonds” means, collectively, the Series 2008 A Bonds and the Series 2008 B Bonds.

“Series 2008 Bonds Construction Trust Fund” means the Series 2008 Bonds Construction Trust Fund established by Section 5.01 hereby.

“Series 2008 A Bonds” means the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), of the Issuer, authorized by this Bond Legislation.

“Series 2008 A Bonds Reserve Account” means the Series 2008 A Bonds Reserve Account created by Section 5.02 hereof.

“Series 2008 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2008 A Bonds in the then current or any succeeding year.

“Series 2008 A Bonds Sinking Fund” means the Series 2008 A Bonds Sinking Fund created by Section 5.02 hereof.

“Series 2008 B Bonds” means the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture), of the Issuer, authorized by this Bond Legislation.

“Series 2008 B Bonds Reserve Account” means the Series 2008 B Bonds Reserve Account created by Section 5.02 hereof.

“Series 2008 B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2008 B Bonds in the then current or any succeeding year.

“Series 2008 B Bonds Sinking Fund” means the Series 2008 B Bonds Sinking Fund created by Section 5.02 hereof.

“Sinking Funds” means, collectively, the respective Sinking Funds created for the Prior Bonds and the Series 2008 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 2008 Bonds; provided, that any matter intended by this Ordinance to be included in the

Supplemental Resolution with respect to the Series 2008 Bonds, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

“System” means the complete public combined waterworks and sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

#### 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 \$5,349,000, 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 Government and the Issuer. The proceeds of the Series 2008 Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Government.

### 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 2008 Bonds and related costs, there shall be and hereby are authorized to be issued negotiable Series 2008 Bonds of the Issuer. The Series 2008 Bonds shall be issued in two series, each as a single bond, designated respectively as “Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture),” in the aggregate principal amount of not more than \$5,000,000, and the “Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture),” in the aggregate principal amount of \$1,034,000, and shall have such terms as are set forth hereinafter or in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2008 Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the legal maximum rate, payable monthly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Series 2008 Bonds.

The Series 2008 Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the respective Bond form hereinafter set forth, and shall have such other terms not inconsistent with this Ordinance, as shall be set forth in the Supplemental Resolution and such Bond form.

Section 3.03. Execution of Bonds. The Series 2008 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2008 Bonds shall cease to be such officer of the Issuer before the Series 2008 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 2008 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. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2008 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 2008 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 2008 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 2008 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.

The Bond Registrar shall accept the Series 2008 Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Government, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2008 Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2008 Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2008 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 3.06. Bonds not to be Indebtedness of the Issuer. The Series 2008 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the System as herein provided. No Registered Owner of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2008 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2008 Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.08. Form of Bonds. The text of the Series 2008 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 2008 A BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 2008 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

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

FOR VALUE RECEIVED, on this \_\_\_\_ day of \_\_\_\_\_, 2008, THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of \_\_\_\_\_% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$ \_\_\_\_\_, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing combined public water and sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing combined public water and sewer facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 18, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2008, and a Supplemental Ordinance duly adopted by the Issuer on \_\_\_\_\_, 2008 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

**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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; (2) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000; (3) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 22, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$425,000; (4) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND,**

{C1255907.1}

SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 10, 2006, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,581,250 (COLLECTIVELY, THE "PRIOR BONDS"); AND (5) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED \_\_\_\_\_, 2008, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2008 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2008 B Bonds, and from moneys in the reserve account created under the Ordinance for this Bond (the "Series 2008 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2008 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2008 B Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Ordinance, this Bond is transferable, as provided in the Ordinance, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office 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

{C1255907.1}

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 Ordinance, 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 Ordinance, 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 Ordinance, 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.

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated as of the date first written above.

---

Mayor

[SEAL]

ATTEST:

---

Recorder

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(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			

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 2008 B BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1 \$\_\_\_\_\_

FOR VALUE RECEIVED, on this \_\_\_\_ day of \_\_\_\_\_, 2008, THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of \_\_\_\_\_% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$\_\_\_\_\_, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing combined public water and sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing combined public water and sewer facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 18, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2008, and a Supplemental Ordinance duly adopted by the Issuer on \_\_\_\_\_, 2008 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

**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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; (2) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000; (3) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 22, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$425,000; (4) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND,**

{C1255907.1}

SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 10, 2006, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,581,250 (COLLECTIVELY, THE "PRIOR BONDS"); AND (5) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED \_\_\_\_\_, 2008, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2008 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2008 A Bonds, and from moneys in the reserve account created under the Ordinance for this Bond (the "Series 2008 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2008 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2008 A Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Ordinance, this Bond is transferable, as provided in the Ordinance, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office 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

{C1255907.1}

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 Ordinance, 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 Ordinance, 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 Ordinance, 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.

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated as of the date first written above.

---

Mayor

[SEAL]

ATTEST:

---

Recorder



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 3.09. Sale of Bonds. The Series 2008 Bonds shall be sold to the Government pursuant to the terms and conditions of the Letter of Conditions. The Letter of Conditions is hereby approved and the provisions of the Letter of Conditions are specifically incorporated in this Ordinance.

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 (or continued if previously created by the Prior Ordinances) 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 (created by the Prior Ordinances);
- (2) Renewal and Replacement Fund (created by the Prior Ordinances); and
- (3) Series 2008 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 2008 A Bonds Reserve Account; and
- (2) Series 2008 B Bonds Reserve Account.

#### Section 5.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System and all parts thereof 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 the Prior Ordinances and 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 the Prior Ordinances and 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 of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Sinking

Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of interest on the Prior Bonds; (ii) commencing on the day which is 30 days following the date of delivery of the Series 2008 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2008 A Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest set forth in the Series 2008 A Bonds; and (iii) commencing on the day which is 30 days following the date of delivery of the Series 2008 B Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2008 B Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest set forth in the Series 2008 B Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Sinking Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of principal of the Prior Bonds; (ii) commencing on the day which is 24 months following the date of delivery of the Series 2008 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2008 A Bonds Sinking Fund, the amount of principal set forth in the Series 2008 A Bonds; and (iii) commencing on the day which is 24 months following the date of delivery of the Series 2008 B Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2008 B Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest set forth in the Series 2008 B Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Reserve Accounts for the Prior Bonds, the amount required by the Prior Ordinances to be deposited therein; (ii) commencing on the day which is 24 months following the date of delivery of the Series 2008 A Bonds and continuing on the corresponding day of each month, remit to the Commission for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2008 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 2008 A Bonds Reserve Requirement; and (iii) commencing on the day which is 24 months following the date of delivery of the Series 2008 B Bonds and continuing on the corresponding day of each month, remit to the Commission for deposit in the Series 2008 B Bonds Reserve Account, an amount equal to 1/120<sup>th</sup> of the Series 2008 B Bonds Reserve Requirement, provided that, no further payments shall be made into the Series 2008

Bonds Reserve Account when there shall have been deposited therein, an amount equal to the Series 2008 B Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances 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, 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 2008 A Bonds Sinking Fund and the Series 2008 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2008 A Bonds and the Series 2008 B Bonds, respectively, as the same shall become due. Moneys in the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2008 A Bonds and the Series 2008 B Bonds, respectively, as the same shall come due, when other moneys in the Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2008 A Bonds Sinking Fund, Series 2008 A Bonds Reserve Account, the Series 2008 B Bonds Sinking Fund and the Series 2008 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 2008 Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due, if any, on the Series 2008 Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirement shall be subsequently restored from the first Net

Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 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 2008 A Bonds Sinking Fund or the Series 2008 A Bonds Reserve Account or the Series 2008 B Bonds Sinking Fund or the Series 2008 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2008 A Bonds or the Series 2008 B Bonds, respectively, then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Prior Bonds and Series 2008 Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account 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. If required by the Government at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Government and the Commission on the dates required hereunder.

Moneys in the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2008 Bonds, respectively, under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in 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 the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

C. 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 reserve account payments 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.

D. 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.

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

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

## ARTICLE VI

### APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds. All moneys received from time to time from the sale of the Series 2008 Bonds shall be deposited in the Series 2008 Bonds Construction Trust Fund and shall be used solely to pay costs of the Project and until so expended, are hereby pledged as additional security for the Series 2008 Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. The Series 2008 Bonds Construction Trust Fund shall be kept separate and apart from all other funds of the Issuer, and shall be drawn out, used and applied by the Issuer solely for the payment of the costs of the Project and purposes incidental thereto, including payment of any borrowings by the Issuer made for the purpose of temporarily financing a portion of the costs of the Project and payment of interest on the Series 2008 Bonds prior to and during construction and for a period up to six months after completion of construction and for no other purposes whatsoever. If approved by the Government, the moneys in said fund shall be secured at all times by Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. If for any reason the amounts on deposit in the Series 2008 Bonds Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Issuer as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Registered Owners of the Series 2008 Bonds.

Expenditures or disbursements from the Series 2008 Bonds Construction Trust Fund shall be made only after such expenditures or disbursements have been approved in writing by the Governing Body, the Consulting Engineers and the Government.

The Issuer shall coordinate with the Government on the monthly payment of the costs of the Project and shall submit invoices and requisitions as directed by the Government.

## 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 2008 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 2008 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 2008 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 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 2008 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2008 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2008 Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Letter of Conditions. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on March 18, 2008, and the water rate ordinance of the Issuer enacted March 18, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2008 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2008 Bonds are outstanding and except as otherwise required by law or with the written consent of the Government, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2008 Bonds, immediately be remitted to the Government for deposit in the Series 2008 Bonds Sinking Fund and the Issuer shall direct the Government to apply such proceeds to the payment of principal of and interest, if any, on the Series 2008 Bonds. Any balance remaining after the payment of the Series 2008 Bonds and the interest, if any, thereon shall be remitted to the Issuer by the Government unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

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

with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, upon consultation with the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall, with the written consent of the Government, be remitted by the Issuer to the Government and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price of such Bonds. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Registered Owners of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2008 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 2008 Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2008 Bonds pursuant to this Bond Legislation, except under the conditions and in the manner provided herein and with the prior written consent of the Government.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2008 Bonds.

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

So long as the Series 2008 Bonds are Outstanding, no Parity Bonds shall be issued at any time, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

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

The foregoing limitation may be waived or modified by the written consent of the Registered Owners of the Series 2008 Bonds, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Series 2008 Bonds are no longer Outstanding, the following parity requirement shall be met:

As long as the Prior Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115% of the maximum debt service in any succeeding year on the following:

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

The “estimated average increased annual Net Revenues to be received in each of the 3 succeeding years,” as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Registered Owners of the Series 2008 Bonds and the Registered Owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinances. All such Bonds, regardless of the

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2008 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2008 Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinances with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinances, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinances and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

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

The Issuer shall permit the Government, or its agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of

operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2008 Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Government, or any other original purchaser of the Series 2008 Bonds, and shall mail in each year to any Registered Owner of the Series 2008 Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2008 Bonds and shall submit said report to the Government, or any other original purchaser of the Series 2008 Bonds. Such

audit report submitted to the Government 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 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 Government, 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 Government, 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 Government with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2008 Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of the rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2008 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the

Series 2008 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2008 Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2008 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2008 Bonds, including the Prior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Government within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate by a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Government and to any Registered Owner of the Series 2008 Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Government and any Registered Owner of the Series 2008 Bonds, or anyone acting for and on behalf of such Registered Owner.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers, 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 Government, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Government 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 Government 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 Government 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.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2008 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(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 Government 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.

(G) 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. Mandatory Connections. The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System.

Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 7.17. Completion of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the PSC necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

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

Section 7.19. Statutory Mortgage Lien. For the further protection of the Registered Owners of the Series 2008 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and

declared to be valid and binding, shall take effect immediately upon delivery of the Series 2008 Bonds and shall be on a parity with each other and the statutory mortgage lien in favor of the Registered Owners of the Prior Bonds.

Section 7.20. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2008 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 Prior Ordinances, 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 2008 Bonds are Outstanding.

Notwithstanding the foregoing, any investments made pursuant to this Resolution shall comply with the guidelines of the Government.

## 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 2008 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2008 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 2008 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 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 Government, 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; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2008 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 System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2008 Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2008 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 and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Series 2008 Bonds, any Registered Owner shall in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

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

## ARTICLE X

### 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 2008 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 2008 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 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 2008 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2008 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2008 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 2008 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 2008 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 2008 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. Except for the 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, provided

that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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 Mayor, the Recorder 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 A 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 St. Marys Oracle, a qualified newspaper published and of general circulation in The City of St. Marys, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2008 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 A 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: September 30, 2008

Passed on Second Reading: October 7, 2008

Passed on Final Reading  
Following Public Hearing: October 21, 2008

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly passed by the Council of THE CITY OF ST. MARYS on October 7, 2008, and effective October 21, 2008.

Dated this 5<sup>th</sup> day of November, 2008.

[SEAL]

  
Recorder

EXHIBIT A

THE PROJECT

The Project consists of the following:

- (1) replacement of various water lines and sewer lines;
- (2) construction of one new water storage tank to replace an existing tank;  
and
- (3) construction of a second new water storage tank to supplement an existing tank.

EXHIBIT B

THE CITY OF ST. MARYS

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on \_\_\_\_\_, 2008, the Council of The City of St. Marys (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the waterworks and sewerage portions of the Issuer's existing public combined waterworks and sewerage system (the "System") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than \$5,000,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture) and not more than \$1,034,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture) (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, reserve accounts and a renewal and replacement fund 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 System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the System; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the registered owners of the Bonds.

6. 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 Council of The City of St. Marys at a \_\_\_\_\_ meeting on \_\_\_\_\_, 2008, at \_\_\_\_\_ p.m., in the Council Chambers, City Hall, St. Marys, 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 Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

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Recorder

2.7

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the “Governing Body”) of The City of St. Marys (the “Issuer”) has duly and officially passed a Bond Ordinance on October 7, 2008, effective October 21, 2008 (the “Bond Ordinance”), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS AND SEWERAGE PORTIONS OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT

OF AGRICULTURE); AND NOT MORE THAN \$1,034,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); 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 Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture) and the Water Revenue Bonds, Series 2008 B (United States Department of Agriculture), of the Issuer, in an aggregate principal amount not to exceed \$5,000,000 and \$1,034,000 (collectively, the “Bonds” or individually the “Series 2008 A Bonds” and the “Series 2008 B Bonds”), all in accordance with Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the “Act”); and in the Bond 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 herein provided for;

WHEREAS, the Bonds are proposed to be purchased by the United States Department of Agriculture; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the “Supplemental Resolution”) be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ST. MARYS, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in the St. Marys Oracle, 1 qualified newspaper published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, St. Marys, West Virginia, on October 21, 2008, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$4,315,000. The Bonds shall be dated the date of delivery, shall mature forty years from the date thereof, shall be numbered AR-1, and the principal

amount advanced under the Series 2008 A Bonds shall bear interest at the rate of 4.5% per annum. Monthly installments of interest only on the amounts advanced under the Series 2008 A Bonds are payable 30 days following the date of delivery of the Series 2008 A Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2008 A Bonds, and thereafter, monthly installments of principal of and interest on the Series 2008 A Bonds, in the aggregate amount of \$19,806, are payable on the corresponding day of each month, except that the final installment on the Series 2008 A Bonds shall be paid at the end of 40 years from the date of the Series 2008 A Bonds in the sum of the unpaid principal and interest due on the date thereof. The Series 2008 A Bonds are subject to prepayment as set forth in the Bond Ordinance and the Series 2008 A Bonds. All principal and interest payments on the Series 2008 A Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

Section 3. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture), of the Issuer, originally represented by a single bond, numbered BR-1, in the original principal amount of \$1,034,000. The Bonds shall be dated the date of delivery, shall mature forty years from the date thereof, shall be numbered BR-1, and the principal amount advanced under the Series 2008 B Bonds shall bear interest at the rate of 4.375% per annum. Monthly installments of interest only on the amounts advanced under the Series 2008 B Bonds are payable 30 days following the date of delivery of the Series 2008 B Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2008 B Bonds, and thereafter, monthly installments of principal of and interest on the Series 2008 B Bonds, in the aggregate amount of \$4,664, are payable on the corresponding day of each month, except that the final installment on the Series 2008 B Bonds shall be paid at the end of 40 years from the date of the Series 2008 B Bonds in the sum of the unpaid principal and interest due on the date thereof. The Series 2008 B Bonds are subject to prepayment as set forth in the Bond Ordinance and the Series 2008 B Bonds. All principal and interest payments on the Series 2008 B Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

Section 4. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 5. The Issuer hereby approves and accepts the Letter of Conditions and all amendments thereto, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. 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 Pleasants County Bank, St. Marys, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2008 Bonds Construction Trust Fund, as received from time to time for payment of costs of the Project, including costs of issuance of the Bonds.

Section 8. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Government on or about November 5, 2008.

Section 9. 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.

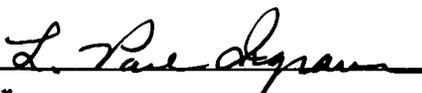
Section 10. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2008 A Bonds Reserve Account and the Series 2008 B Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 11. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Mayor is hereby authorized and directed to execute and deliver all such contracts.

Section 12. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 13. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 21<sup>st</sup> day of October, 2008.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of THE CITY OF ST. MARYS on the 21<sup>st</sup> day of October, 2008.

Dated this 5<sup>th</sup> day of November, 2008.

[SEAL]



\_\_\_\_\_  
Recorder

2.8

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

MINUTES ON ADOPTION OF BOND ORDINANCE  
(THIRD READING FOLLOWING PUBLIC HEARING)  
AND SUPPLEMENTAL RESOLUTION

The undersigned Recorder of The City of St. Marys (the “Issuer”), hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the Council of the Issuer:

\* \* \*

\* \* \*

\* \* \*

The Council of the Issuer met in regular session, pursuant to notice duly given, on the 21<sup>st</sup> day of October, 2008, in St. Marys, West Virginia, at the hour of 7:00 p.m.

PRESENT: Linda Wilson - Recorder  
Rick McCullough - Council Member  
Charlie Knight - Council Member  
Holly West - Council Member  
Bill Israel - Council Member  
Mike Hendricks - Council Member

ABSENT: L. Paul Ingram - Mayor  
J. B. Phillips - Council Member

Rick McCollough acted as Mayor Pro-tem and Linda Wilson acted as Recorder. The Mayor Pro-tem announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance heretofore passed on first and second readings would be subject to protests and suggestions from any interested person at this time in accordance with the publication of an abstract of said Bond Ordinance and a Notice of Hearing, which publication has been duly made, and the Mayor Pro-tem called for protests and suggestions as to said Bond Ordinance and all persons desiring to protest the said Bond Ordinance or to make any suggestions with reference thereto were heard.

There being no protests or suggestions made as to said Bond Ordinance, the Mayor Pro-tem thereupon stated that it would be in order to consider the said Bond

Ordinance for final enactment and the Mayor Pro-tem caused the said Bond Ordinance to be read as follows:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS AND SEWERAGE PORTIONS OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE); AND NOT MORE THAN \$1,034,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); 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.

and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said Bond Ordinance be finally enacted and put in full force and effect on and from the date hereof.

Next, the Chairperson presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES

DEPARTMENT OF AGRICULTURE) AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE);  
AUTHORIZING AND APPROVING THE SALE AND  
DELIVERY OF SUCH BONDS TO THE UNITED STATES  
DEPARTMENT OF AGRICULTURE; DESIGNATING A  
DEPOSITORY BANK AND MAKING OTHER PROVISIONS  
AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

\* \* \*

\* \* \*

\* \* \*

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

  
\_\_\_\_\_  
Mayor

\* \* \*

\* \* \*

\* \* \*

CERTIFICATION

I further hereby certify that the foregoing action of the Council remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 5<sup>th</sup> day of November, 2008.

  
Recorder

cc: Art Boggs  
Senator Boley

Approved on 10/07/08 as written.

**MINUTES OF THE SEPTEMBER 30, 2008** special session of the common council of The City of St. Marys, WV, held in council chambers.

Mayor L. Paul Ingram called the meeting to order at 7:00 p.m. and stated the purpose of the meeting was to approve the bond ordinance upon first reading.

Attending were: Mayor L. Paul Ingram, Cty Mgr Tom Painter, Cty Rec Linda K. Wilson, Councilpersons: Charlie Knight, Rick McCullough, J. B. Phillips, Bill Israel, and Mike Hendricks.

Absent: Councilperson Holly West.

Also in attendance was Ryan White from Jackson Kelly.

Ryan White read the ordinance by title only:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS AND SEWERAGE PORTIONS OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE); AND NOT MORE THAN \$1,034,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); 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

Rick McCullough moved to approve the ordinance upon first reading and to advance the ordinance to a second reading at the regular session of Council on October 7, 2008.

Motion was duly seconded.  
Motion passed unanimously.

#### **ADJOURNMENT:**

Mike Hendricks moved to adjourn.  
Motion was seconded.  
Motion passed unanimously.

Meeting adjourned at 7:04 P.M.

cc: Art Boggs  
Senator Boley

Approved on 10/21/08 as \_\_\_\_\_.

**MINUTES OF THE OCTOBER 07, 2008** regular session of the common council of The City of St. Marys, WV, held in council chambers.

Mayor L. Paul Ingram called the regular session of the common council to order at 7:00 P.M.

Everyone stood for the **PLEDGE OF ALLEGIANCE**.

Attending were: Mayor L. Paul Ingram, Cty Rec Linda Wilson, Cty Mgr Tom Painter, Chief of Police Bill Stull, Councilpersons: J. B. Phillips, Charlie Knight, Holly West, Rick McCullough, and Mike Hendricks.

Absent: Councilperson Bill Israel.

**APPROVAL OF MINUTES:**

J. B. Phillips moved to dispense with the reading of the minutes of the regular session of September 16, 2008, and of the special session of September 30, and approve them as written. Copies of both of those minutes had been distributed to members of Council prior to tonight's meeting.

Mike Hendricks seconded.  
Motion passed unanimously.

**GUESTS:**

**Samme Gee, Bond Counsel, Jackson Kelly PLLC** – Ms. Gee read the ordinance by title only:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS AND SEWERAGE PORTIONS OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE); AND NOT MORE THAN \$1,034,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE); 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

Ms. Gee explained that this ordinance authorizes the City to sell two bonds that total not more than \$6,034,000 to the USDA to finance water and sewer improvements within the City of St. Marys. The bonds are secured by a lien on the revenues of the water and sewer system. These bonds would be issued on a parity with our existing bonds. The bonds will be issued for 40 years. The first two years we will pay interest only. A portion of that interest is capitalized as part of the borrowing. After that, we will have equal monthly payments for the next 38 years. This is the second reading. If adopted tonight, a public hearing will be scheduled for October 21, 2008.

J. B. Phillips moved to adopt the ordinance upon second reading.  
Mike Hendricks seconded.  
Motion passed unanimously.

**OLD BUSINESS:**

City Manager's Report

There was nothing to report on the following agenda items:

3. Greenspan Project
  4. WVDHHR Deficiencies re: Water Storage Facilities – We continue to work on the deficiencies.
  5. Emergency Planning and safety issues
  6. Washington Street Paving
  7. Specifications re: use of City's dumpsters
  9. Specifications re: Street Repairs
- 
1. Water & Sewer line-replacements, water storage, and street-paving project, including replacement of: water meters, hand-held meter reading devices & software – Cty Mgr reported the project was moving along. Bond Closing was scheduled for November 3, 2008.
  2. New Sewer Treatment Plant Project – Cty Mgr reported that March 1, 2009 was the target date to get everything done.
  8. Setting stop lights to “caution” from 10 PM – 5 AM: Cty Mgr had heard from both DOH and CSX. They did not want to set the lights to caution. Instead, they would recommend the lights be set for shorter cycles during those hours.

There were no objections.

10. Report on condition of dumpsters – Cty Mgr reported that six dumpsters need scraped. We also have some that will need to be repaired. The six scraped dumpsters will need to be replaced. Cty Mgr would get with Cty Rec to determine the cost and determine how many we could afford.

Mike Hendricks made a motion to purchase the six dumpsters as funds permit.  
Charlie Knight seconded.  
Motion passed unanimously.

Chief of Police's Report

Chief Stull had nothing to report.

City Recorder's Report

Cty Rec gave an update on the past due PEIA issue, and asked for guidance on how and from where the past-due amount would be paid.

J. B. Phillips moved to pay the past due amount out of surplus funds in each of the four funds and to continue to pay on a monthly basis (as opposed to paying the entire amount all at once).

Rick McCullough seconded.  
Motion passed unanimously.

### City Attorney's Report

There was nothing to report on the following agenda items:

1. Collection of B&O taxes from CSX job in 1999 – Forms sent – Need amount of contract.
2. Suit filed against MCS SPECTRUM in 2000 – 2001.
3. Ordinance re: Regulation of truck trailer parking along Route 2 – 1<sup>st</sup> Reading (02/03/04)
4. Completion of Annexation of both Stewart Properties (Bd. of Ed.)  
4/16/06 – CA reported that Co. Comm. re-scheduled public hearing for June 7, 2006.  
6/21/06 – CA reported that public hearing had not been re-scheduled, yet.
6. Rules governing yard sale signs, etc. (See 07/18/06 agenda)
7. Agreement re: \$25,000 contribution to Alumni Center (See 08/07/07 agenda)
8. Annexation of Marina (See 09/17/07 agenda)
9. Ordinance prohibiting city employees from also holding city/other elected positions

Cty Atty reported on the following:

4. and 8. Annexations – Cty Atty reported those issues were to go before the County Commission on November 5<sup>th</sup> and 9:00 a.m. Once approved by the Commission, the annexations will become effective the same day.
5. Consent order to cap and re-drill two water wells (See 05/16/06 agenda) – Cty Atty reported that this issue would be discussed during the public meeting to be held at the Library on October 14, 2008, at 6:00 p.m.

### Mayor's Report

Mayor Ingram reminded everyone of the MOVMA meeting tomorrow at the Fireside Restaurant at 6:00 p.m..

### Committee Reports

There was nothing to report.

### **NEW BUSINESS:**

#### 1. Promote Bob Taylor to replace Mike Miller

J. B. Phillips move to promote Bobbie Taylor to full time.  
Mike Hendricks seconded.  
Motion passed unanimously.

#### 2. Discussion re: Electrical Upgrades at Marina (\$10,000 grant)

Cty Mgr stated that we needed to make a decision regarding the kind of posts to be used in the project.

Bill Bradfield wanted 4' wooden posts with electrical connections up and down the posts. The connections would be up out of the water and mud. Decorative posts could be used if something better looking was wanted. The wooden posts could be utilized to attach some of the displays.

Cty Mgr explained that he was looking for a waterproof box that would be buried into the ground. Metal posts would snap into the box. When not in use, the posts could be removed and stored.

Bill Bradfield was concerned that anything that was buried in the ground would leak eventually, after being under flood water a few times.

When asked what the Corps of Engineers' recommendations were, Cty Mgr reported that he had sent them a plat and a letter. He had not heard from them. He hoped to hear from them very soon. We need their approval before any work we plan to do at the marina. Cty Mgr would call them tomorrow. We need to see what they recommend.

Rick McCullough stated that he was in favor of going the simplest route possible. We could always change it later if necessary.

Council agreed to wait until we hear from the Corps of Engineers before making any decisions.

### 3. Discussion re: Middle Island Bridge

Cty Mgr had given Mayor and Council a project description on the proposed bridge and asked them to study the proposal and get familiar with it. We need to be knowledgeable and appear to know what we are talking about during any meetings. He would like to see it funded.

### 4. Purchase new computer for Cty Mgr

Cty Mgr had someone who would build a PC for about \$450. The guy was not charging any labor for building it. Cty Mgr stated that if it did not work, he would purchase the computer from the City.

J. B. Phillips moved to approve up to \$500.00 for the purchase of a new computer.

Holly West seconded.

Motion passed unanimously.

### 5. Approval of Homecoming Bonfire and Parade Permit

Mike Hendricks moved to approve both, as submitted.

Rick McCullough seconded.

Motion passed unanimously.

### 6. Approval of Budget Revisions: General Fund; Community Committee Fund; Special Levy Fund

Cty Rec explained all three revisions. These revisions were for the most part, to bring monies into the funds for grants or contributions. The only other thing in the General Fund Budget Revision was to add monies to the marina building labor line item for additional hours to clean the building more thoroughly. This revision includes 15 hours per week for the upkeep of the building and the grounds around it.

It was recommended that if someone does not call and get checked out once done with the building, their cleaning deposit should not be refunded.

Mike Hendricks moved to approve the revisions as presented.

Rick McCullough seconded.

Motion passed unanimously.

## 7. Approval of Bills

The following bills were submitted for approval:

General Fund	\$ 4,361.12
Coal Severance Fund	38.50
Special Levy Fund	78.10
Water Fund	6,022.03
Sewer Fund	3,072.04
Refuse Fund	<u>3,027.27</u>
 Total All Funds	 \$16,599.06

Holly West moved to approve the bills for payment.

Mike Hendricks seconded.

Motion passed unanimously.

Cty Rec reported that a card was received from Linda Dixon thanking everyone for all our help and support for a successful military parade.

### **ADJOURNMENT:**

Mike Hendricks motioned to adjourn.

Holly West seconded.

Motion passed unanimously.

Meeting adjourned at 7:52 p.m.



# St. Marys Oracle

Ph. (304) 684-2424 • Fax (304) 684-2426

P.O. Box 27, St. Marys, WV 26170

WEST CENTRAL PUBLISHING  
FEDERAL I.D. NO. 55-06700561  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS, to wit:

I, Randa Gregg, being first duly sworn upon my oath, do depose and say:

- that I am General Manager of The St. Marys Oracle, a Democratic newspaper,
- that I have been duly authorized to execute this affidavit,
- that such newspaper is regularly published weekly for at least fifty weeks during the calendar year, in the municipality of St. Marys, Pleasants County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within St. Marys and Pleasants County
- that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
- that such newspaper is circulated to the general public at a definite price or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

### Notice of Public Hearing Abstract Bond Ordinance

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
TWO	October 8 and 15, 2008

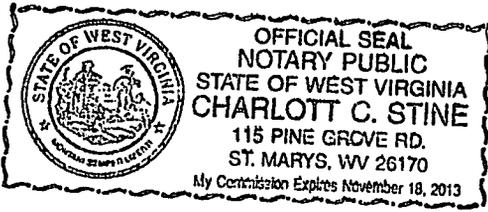
PUBLICATION CHARGES	\$164.37
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**CERTIF-BILL TO**  
**City of St. Marys**  
**418 Second Street**  
**St. Marys, WV 26171**

(signed) *Randa Gregg*  
 NOTARIZATION

Taken, sworn to and subscribed before me this 15<sup>th</sup>  
 day of October, 2008

*Charlott C. Stine*  
 Notary Public



**PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT TO:**  
**P.O. BOX 27, ST. MARYS, WV 26170**

*Monetary: October 21, 2008*

### THE CITY OF ST. MARYS NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October 7, 2008, the Council of The City of St. Marys (the "Issuer"), adopted an ordinance which, among other things:

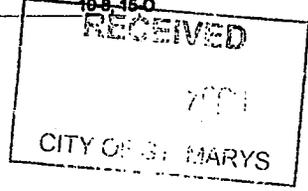
1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the waterworks and sewerage portions of the Issuer's existing public combined waterworks and sewerage system (the "System") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than \$5,000,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture) and not more than \$1,034,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture) (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, reserve accounts and a renewal and replacement fund 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 System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the System; provided certain conditions for the issuance of additional bonds.
5. Provided for insurance coverage on the Project and the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the registered owners of the Bonds.

6. 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 Council of The City of St. Marys at a regular meeting on October 21, 2008, at 7:00 p.m., in the Council Chambers, City Hall, St. Marys, 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 Council is on file with the City Recorder for review by interested persons during the office hours of the City Hall.

*/s/ Linda K. Wilson*  
 City Recorder



AR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 2008 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$4,315,000

FOR VALUE RECEIVED, on this 5<sup>th</sup> day of November, 2008, THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of FOUR MILLION THREE HUNDRED FIFTEEN THOUSAND DOLLARS (\$4,315,000), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.5% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$19,806, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Issuer as requested by the Issuer and approved by the

NUMBER  
AR-1

# SPECIMEN

Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing combined public water and sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing combined public water and sewer facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 18, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on October 21, 2008, and a Supplemental Ordinance duly adopted by the Issuer on October 21, 2008 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; (2) COMBINED WATERWORKS AND

AR-1

**SPECIMEN**

SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000; (3) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 22, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$425,000; (4) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND, SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 10, 2006, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,581,250 (COLLECTIVELY, THE "PRIOR BONDS"); AND (5) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 5, 2008, ISSUED SIMULTANEOUSLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,034,000 (THE "SERIES 2008 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2008 B Bonds, and from moneys in the reserve account created under the Ordinance for this Bond (the "Series 2008 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2008 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2008 B Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Ordinance.

AR-1  
SPECIMEN

Remedies provided the Registered Owner of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Ordinance, this Bond is transferable, as provided in the Ordinance, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office 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 Ordinance, 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 Ordinance, 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 Ordinance, 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.

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to

AR-1 SPECIMEN

the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

AR-SPECIMEN

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated as of the date first written above.

L. Paul Ingram  
Mayor

[SEAL]

ATTEST:

Linda K. Wilson  
Recorder

AR-1

RECORD OF ADVANCES

SPECIMEN

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$ 626,000	November 5, 2008	(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 \$

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:

\_\_\_\_\_

{C1255888.1}

AR-1

## SPECIMEN

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

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

NUMBER  
BR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1

\$1,034,000

FOR VALUE RECEIVED, on this 5<sup>th</sup> day of November, 2008, THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of ONE MILLION THIRTY-FOUR THOUSAND DOLLARS (\$1,034,000), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.375% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$4,664, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Issuer as requested by the Issuer and approved by the

Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing combined public water and sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing combined public water and sewer facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 18, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on October 21, 2008, and a Supplemental Ordinance duly adopted by the Issuer on October 21, 2008 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; (2) COMBINED

NUMBER

BR-1 SPECIMEN

WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000; (3) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 22, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$425,000; (4) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND, SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 10, 2006, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,581,250 (COLLECTIVELY, THE "PRIOR BONDS"); AND (5) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 5, 2008, ISSUED SIMULTANEOUSLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,315,000 (THE "SERIES 2008 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2008 A Bonds, and from moneys in the reserve account created under the Ordinance for this Bond (the "Series 2008 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2008 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2008 A Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owner of this Bond are

exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Ordinance, this Bond is transferable, as provided in the Ordinance, only upon the books of the Recorder of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office 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 Ordinance, 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 Ordinance, 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 Ordinance, 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.

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

BR-1

## SPECIMEN

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

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

BR-1

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated as of the date first written above.

*L. Paul D'Amico*  
\_\_\_\_\_  
Mayor  
SPECIMEN

[SEAL]

ATTEST:

*Linda K. Nelson*  
\_\_\_\_\_  
Recorder  
SPECIMEN

BR-1

RECORD OF ADVANCES

SPECIMEN

AMOUNT

DATE

AMOUNT

DATE

(1) \$	52,000	November 5, 2008	(19) \$
(2) \$			(20) \$
(3) \$			(21) \$
(4) \$			(22) \$
(5) \$			(23) \$
(6) \$			(24) \$
(7) \$			(25) \$
(8) \$			(26) \$
(9) \$			(27) \$
(10) \$			(28) \$
(11) \$			(29) \$
(12) \$			(30) \$
(13) \$			(31) \$
(14) \$			(32) \$
(15) \$			(33) \$
(16) \$			(34) \$
(17) \$			(35) \$
(18) \$			(36) \$

\$

TOTAL

ASSIGNMENT

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

2.11(A)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A (UNITED STATES DEPARTMENT OF AGRICULTURE)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$4,315,000	November 5, 2008

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America  
National Finance Office  
1520 Market Street  
St. Louis, Missouri 63103

Signature of Registrar:

The City of St. Marys

  
Recorder

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

BOND REGISTER

2.11(B)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 B (UNITED STATES DEPARTMENT OF AGRICULTURE)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$1,034,000	November 5, 2008

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America  
National Finance Office  
1520 Market Street  
St. Louis, Missouri 63103

Signature of Registrar:

The City of St. Marys



Recorder

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**CITY OF ST. MARYS**

**BOND ORDINANCE**

**(Combined Waterworks and Sewerage System  
Revenue Refunding Bonds, Series 1996 A  
and  
Combined Waterworks and Sewerage System  
Revenue Bonds, Series 1996 B)**

INDEX

	<u>PAGE</u>	
ARTICLE I	STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS .....	1
	Section 1.01. Authority of this Ordinance .....	1
	Section 1.02. Definitions .....	1
	Section 1.03. Ordinance Constitutes Contract .....	10
	Section 1.04. Findings .....	11
ARTICLE II	AUTHORIZATION OF REFUNDING .....	14
	Section 2.01 Authorization of Refunding .....	14
ARTICLE III	AUTHORIZATION OF DESIGN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM .....	15
	Section 3.01. Authorization of Design of Project .....	15
	Section 3.02. Authorization of Extensions, Additions, Betterments and Improvements .....	15
ARTICLE IV	AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS .....	16
	Section 4.01. Authorization and Terms of Original Bonds .....	16
	Section 4.02. Execution of Bonds .....	17
	Section 4.03. Authentication and Registration .....	17
	Section 4.04. Negotiability, Transfer and Registration .....	17
	Section 4.05. Bonds Mutilated, Destroyed, Stolen or Lost .....	18
	Section 4.06. Bonds not to be Indebtedness of the Issuer .....	18
	Section 4.07. Bonds Secured by Pledge of Net Revenues .....	19
	Section 4.08. Form of Original Bonds .....	19
	Section 4.09. Sale of Original Bonds; Ratification and Execution of Loan Agreement with Authority and DEP .....	35
	Section 4.10. Certificate of Consulting Engineers .....	35
	Section 4.11. Amended Schedule A Filing .....	35
ARTICLE V	[RESERVED] .....	36

**PAGE**

<b>ARTICLE VI</b>	<b>SYSTEM REVENUES AND APPLICATION THEREOF</b>	<b>37</b>
Section 6.01.	Establishment of Funds and Accounts with Depository Bank	37
Section 6.02.	Establishment of Funds and Accounts with Commission	37
Section 6.03.	System Revenues; Flow of Funds	37
Section 6.04.	Excess Bond Proceeds	41
<b>ARTICLE VII</b>	<b>APPLICATION OF ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS</b>	<b>42</b>
Section 7.01.	Application of Series 1996 A Bond Proceeds	42
Section 7.02.	Application of Series 1996 B Bond Proceeds	42
Section 7.03.	Disbursements From the Bond Construction Trust Fund	42
<b>ARTICLE VIII</b>	<b>ADDITIONAL COVENANTS OF THE ISSUER</b>	<b>44</b>
Section 8.01.	General Covenants of the Issuer	44
Section 8.02.	Bonds not to be Indebtedness of the Issuer	44
Section 8.03.	Bonds Secured by Pledge of Net Revenues	44
Section 8.04.	Rates and Charges	44
Section 8.05.	Rates	44
Section 8.06.	Completion, Operation and Maintenance; Schedule of Cost	45
Section 8.07.	Sale of the System	45
Section 8.08.	Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances	46
Section 8.09.	Parity Bonds	47
Section 8.10.	Insurance and Construction Bonds	49
Section 8.11.	Consulting Engineers	49
Section 8.12.	Compliance With Loan Agreement, Rules and Regulations	50
Section 8.13.	No Free Services	50
Section 8.14.	Enforcement of Collections	50
Section 8.15.	No Competing Franchise	51
Section 8.16.	Books, Records and Facilities	51
Section 8.17.	Operating Budget	53
Section 8.18.	Mandatory Connection	53
Section 8.19.	Compliance with Loan Agreement	54
Section 8.20.	Tax Covenants	54
Section 8.21.	Statutory Mortgage Lien	55
Section 8.22.	Rebate Covenant	55
Section 8.23.	Securities Compliance	55

	<u>PAGE</u>
ARTICLE IX     INVESTMENT OF FUNDS; NON-ARBITRAGE .....	56
Section 9.01. Investments .....	56
Section 9.02. Arbitrage .....	56
Section 9.03. Tax Certificate and Rebate .....	56
Section 9.04. Restriction of Yield and Bond Proceeds .....	58
ARTICLE X       DEFAULT AND REMEDIES .....	59
Section 10.01. Events of Default .....	59
Section 10.02. Remedies .....	59
Section 10.03. Appointment of Receiver .....	59
ARTICLE XI      DEFEASANCE .....	61
Section 11.01. Defeasance of Bonds .....	61
ARTICLE XII     MISCELLANEOUS .....	62
Section 12.01. Modification or Amendment .....	62
Section 12.02. Severability of Invalid Provisions .....	62
Section 12.03. Repeal of Conflicting Ordinances .....	62
Section 12.04. Covenant of Due Procedure .....	62
Section 12.05. Effective Date .....	62
Section 12.06. Statutory Notice and Public Hearing .....	62
EXHIBIT A - Description of Project	
EXHIBIT B - Commitment Letter	
EXHIBIT C - Notice of Public Hearing and Abstract of Ordinance	

## BOND ORDINANCE

Introduced in Council

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Introduced by

Passed by Council

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An Ordinance authorizing the issuance of not more than \$60,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A, of the City of St. Marys to be used to refund the City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 1982; authorizing the issuance of not more than \$128,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, of the City of St. Marys to be used, along with other funds and moneys of, or available to, the City of St. Marys which may be lawfully expended for such purposes, to finance the cost of such design of certain extensions, additions, betterments and improvements to the wastewater treatment facility portion of the combined waterworks and sewerage system of the City of St. Marys and to pay other costs in connection therewith; providing for the rights and remedies of and security for the owners of such bonds; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming a loan agreement or loan agreements relating to such bonds; authorizing the sale and providing for the terms and provisions of such bonds and adopting other provisions related thereto.

Be It Ordained by the Council of the City of St. Marys, West Virginia:

### ARTICLE I

#### STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 20, and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise.

A. "Act" shall mean collectively Chapter 8, Article 20, and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1996 B Bonds on behalf of the Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Bank" shall mean the bank set forth in a resolution supplemental hereto.

D. "Board" shall mean the Water and Sewer Board of the Issuer, as created and appointed by ordinance enacted by the Council of the Issuer pursuant to the provisions of Section 18 of the Act, and any successor thereto.

E. "Bond Construction Trust Fund" shall mean the fund created by Section 6.01 hereof.

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

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

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

I. "Bonds" shall mean, collectively, the City of St. Marys Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A and the City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, originally authorized hereby, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

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

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

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

M. "Commitment Letter" shall mean the letter dated August 8, 1996, from The First National Bank of St. Marys advising of its intent to purchase the Series 1996 A Bonds.

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

O. "Consulting Engineers" shall mean S & S Engineers, Inc., Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

Q. "Council" shall mean the Council of the Issuer.

R. "Debt Service" shall mean the scheduled amount of interest and amortization of principal payable on the Series 1996 A Bonds and the Series 1996 B Bonds, as hereinafter defined, during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

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

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

(A) The excess of

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

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

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

V. "FDIC" shall mean the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

W. "First National Bank" shall mean The First National Bank of St. Marys, which is expected to be the original purchaser and Registered Owner of the Series 1996 A Bonds.

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

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

Z. "Grant" shall mean any grant or grants received by the Issuer in aid of the cost of the design, acquisition and construction of the Project.

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

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

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

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

EE. "Independent Accountants" shall mean any firm of certified public accountants which shall be retained by the Issuer as independent accountants for the System

or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

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

GG. "Issuer" shall mean the City of St. Marys, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any department, board, organizing or instituting thereof in control of the management and operation of the System, as hereinafter defined.

HH. "Loan Agreement" shall mean the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority, the form of which will be attached to the Supplemental Resolution approving each series of bonds.

II. "Mayor" shall mean the Mayor of the Issuer.

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

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

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

MM. "Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, DEP, fiscal agents, the Registrar and Paying Agent (both 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.

NN. "Ordinance" or "this Ordinance" shall mean this ordinance as hereafter amended or supplemented.

OO. "Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the not more than \$60,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A issued for the purpose of refunding the Series 1982 Bonds, as hereinafter defined, and not more than the \$128,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B issued for the purpose of paying the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

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

QQ. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 8.08 hereof, payable from Net Revenues on a parity with the Original Bonds.

RR. "Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the Issuer.

SS. "Prior Ordinance" shall mean the Ordinance enacted November 29, 1982, with respect to the Series 1982 Bonds, as hereinafter defined.

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

"incidental use", if any, of the proceeds of the issue and/or proceeds used for "qualified improvements", if any.

UU. "Program" shall mean the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

VV. "Project" shall mean the design of certain extensions, additions, betterments and improvements to the sewage portion of the System.

WW. "PSC" means the Public Service Commission of West Virginia and any successors to the functions thereof.

XX. "PSC Order" means the recommended decision of the PSC regarding the acquisition and construction of the Project which grants the Issuer a certificate of convenience and necessity and approval of financing.

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; the Tennessee Valley Authority; or the Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligation issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC"), shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must

be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

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

ZZ. "Recorder" shall mean the Recorder of the Issuer.

AAA. "Registrar" shall mean the entity or entities named as such in the Supplemental Resolution.

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

CCC. "Renewal and Replacement Fund" shall mean the fund created by Section 6.01(2) hereof.

DDD. "Reserve Accounts" shall mean, collectively, the accounts in the respective Sinking Funds, as hereinafter defined, created by Sections 6.02(1) and 6.02(2) hereof.

EEE. "Reserve Requirements" shall mean as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 1996 A Bonds or the Series 1996 B Bonds in the then current or any succeeding Fiscal Year.

FFF. "Revenue Fund" shall mean the fund created in Section 6.01(1) hereof.

**GGG.** "Series 1982 Bonds" shall mean the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1982, dated November 29, 1982, issued in the original principal amount of \$200,000 and outstanding on the date of introduction of this Ordinance in the amount of \$57,687, to be refunded by the Series 1996 A Bonds authorized hereunder.

**HHH.** "Series 1996 A Bonds" shall mean the not more than \$60,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A of the Issuer.

**III.** "Series 1996 A Bonds Reserve Account" shall mean the Series 1996 A Bonds Reserve Account established in the Series 1996 A Bonds Sinking Fund pursuant to Section 6.02(1) hereof.

**JJJ.** "Series 1996 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1996 A Bonds in the then current or any succeeding year.

**KKK.** "Series 1996 B Bonds" shall mean the not more than \$128,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B of the Issuer.

**LLL.** "Series 1996 B Bonds Reserve Account" shall mean the Series 1996 B Bonds Reserve Account established in the Series 1996 B Bonds Sinking Fund pursuant to Section 6.02(2) hereof.

**MMM.** "Series 1996 B Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1996 B Bonds in the then current or any succeeding year.

**NNN.** "Sinking Funds" shall mean, collectively, the funds created by Sections 6.02(1) and 6.02(2) hereof.

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

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

**QQQ.** "State" shall mean the State of West Virginia.

**RRR.** "Supplemental Resolution" shall mean 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 or resolutions authorizing the sale of the Original Bonds; provided, that any matter intended by this Ordinance to be

included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

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

TTT. "System" shall mean the complete existing combined waterworks and sewerage system now owned by the Issuer, consisting of a waterworks system in its entirety or any integral part thereof, and a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the wastewater treatment facility, hereafter acquired or constructed for said waterworks and sewerage system from any sources whatsoever, both within and without said Issuer.

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

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

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

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

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

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Original Bonds and any other bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by said Issuer shall be for the equal benefit, protection and security of the legal owners of any and all of such Bonds, all of which shall

be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The City of St. Marys, West Virginia, a municipal corporation and political subdivision of the State in Pleasants County of said State, now owns a combined waterworks and sewerage system consisting of a waterworks system in its entirety or any integral part thereof, including some or all of mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system, and a sewage treatment plant or plants and some or all of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes (herein referred to as the "System").

B. In accordance with Section 18 of the Act, the System is under the supervision and control of the Water and Sewer Board of the Issuer (the "Board").

C. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be first designed and then acquired and constructed the Project, consisting of wastewater treatment plant upgrades, all of which will constitute extensions, additions, betterments and improvements to the System at an estimated cost not to exceed \$2,000,000, in accordance with the plans and specifications to be prepared by the Consulting Engineers, which plans and specifications following approval by DEP will be on file with the Issuer, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and will have an estimated useful life in excess of twenty (20) years.

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

E. Pursuant to the Act, the Issuer is authorized and empowered to issue revenue refunding bonds to refund, pay or discharge all or any part of its outstanding revenue bonds. The Issuer is advised that present value debt service savings will be realized as a result of the refunding of the Series 1982 Bonds. The registered owner of the Series 1982 Bonds has agreed to the current refunding of said Series 1982 Bonds. The Issuer hereby determines that it will be to the benefit of the Issuer and its residents to refund on a current

basis the Series 1982 Bonds by paying in full the entire outstanding principal of, the redemption premium, if any, and the interest on, the Series 1982 Bonds, on the Closing Date, in the manner set forth herein with the proceeds of the Series 1996 A Bonds, in the maximum aggregate principal amount of not to exceed \$60,000, and other moneys of the Issuer, such Series 1996 A Bonds to be secured by and payable from the Net Revenues of the System, on a parity with the Series 1996 B Bonds.

F. It is in the best interests of the Issuer that its Series 1996 A Bonds be sold to the First National Bank pursuant to its Commitment Letter, attached hereto as Exhibit B and made a part hereof, to take advantage of the favorable terms available to the Issuer.

G. It is deemed necessary for the Issuer to issue its Series 1996 B Bonds in the aggregate principal amount of not more than \$128,000 to finance the costs of design of the Project herein described through the Program. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; engineering, fiscal and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority or DEP and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Original Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Original Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

H. It is in the best interests of the Issuer that its Series 1996 B Bonds be sold to the West Virginia Water Development Authority pursuant to the terms and provisions of the Loan Agreement by and among the Authority, the DEP and the Issuer. At such time as the Issuer considers reasonable, it shall be in the best interests of the residents of the Issuer that Bonds for the acquisition and construction of the Project be issued pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and DEP or such other lenders as may be approved by an ordinance or supplemental resolution.

I. The Issuer has complied with all requirements of West Virginia law relating to the refunding of the Series 1982 Bonds, authorization of the design of the Project and the issuance of the Bonds for the refunding and design phase of the Project. The Issuer has received the approval of the West Virginia Infrastructure and Jobs Development Council.

J. The Code provides exceptions from the rebate provisions for issues of small governmental units meeting certain requirements. It is in the best interest of the Issuer and its inhabitants to qualify for the small governmental unit exception from the rebate

provisions for the Bonds issued for the design phase. Accordingly, it is hereby found and determined:

- (1) The Issuer is a governmental unit with general taxing powers.
- (2) The Original Bonds are not private activity bonds as defined by the Code.
- (3) Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the Issuer.
- (4) The Issuer reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Issuer and all subordinate entities thereof during the calendar year in which the Bonds for the refunding and design phase will be issued will not aggregately exceed \$5,000,000. The Issuer reasonably expects to issue the Bonds in calendar year 1996.

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

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

M. The Bonds will be federally guaranteed within the meaning of the Code.

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

O. The Issuer hereby finds and determines that the amount of tax-exempt obligations (other than private activity bonds) which it anticipates issuing during calendar year 1996 shall not exceed \$10,000,000 and therefore the Issuer hereby designates the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

## ARTICLE II

### AUTHORIZATION OF REFUNDING

Section 2.01 Authorization of Refunding. The Series 1982 Bonds Outstanding as of the date of issuance of the Series 1996 A Bonds are hereby ordered to be refunded (paid in full), and the pledge of Net Revenues in favor of the Holders of such refunded Series 1982 Bonds imposed by the Prior Ordinance, the moneys in the funds and account created by such ordinance and any other funds pledged by such ordinance thereto are hereby ordered terminated, discharged and released upon full payment to the Holder of the Series 1982 Bonds of the principal of, redemption premium, if any, and interest on, the Series 1982 Bonds on the Closing Date with the proceeds of the Series 1996 A Bonds, together with other moneys available therefor. On the Closing Date, the amounts on deposit in the sinking fund, including the reserve account therein, and all other funds and accounts created and maintained on behalf of the Series 1982 Bonds shall be deposited in the Series 1996 A Bonds Reserve Account in an amount not to exceed the Series 1996 A Bonds Reserve Requirement as shall be set forth in the Supplemental Resolution or applied to the payment of the principal of and interest on the Series 1982 Bonds. Upon the payment and retirement of the Series 1982 Bonds, the amounts on deposit in the Renewal and Replacement Fund created and maintained under the Prior Ordinance shall be transferred to the Renewal and Replacement Fund created under this Ordinance.

### ARTICLE III

#### AUTHORIZATION OF DESIGN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 3.01. Authorization of Design of Project. There is hereby authorized the design of plans and specifications for the Project by the Consulting Engineers as described in the Program application.

Section 3.02. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers, to be approved by DEP and the Issuer and to be filed in the office of the Board.

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

ARTICLE IV  
AUTHORIZATION, TERMS, EXECUTION  
AND REGISTRATION OF BONDS

**Section 4.01. Authorization and Terms of Original Bonds.** For the purposes of funding the reserve accounts, paying costs of issuance, refunding the Series 1982 Bonds and financing a portion of the costs of the design, acquisition and construction of the Project not otherwise provided for, there shall be issued the Original Bonds of the Issuer. The Original Bonds shall be issued in one or more series with the first two series to be designated "Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A" in an aggregate principal amount of not more than \$60,000 and "Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B" in an aggregate principal amount of not more than \$128,000. Each series of Original Bonds shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding twenty-one (21) years after the date of issuance, and in such amount or amounts as shall be set out in the Debt Service Schedule for the Series 1996 A Bonds and Schedule X to the Loan Agreement for the Series 1996 B Bonds. The payment of principal and interest on the Series 1996 A Bonds shall be as set forth on the Debt Service Schedule. The Series 1996 B Bonds shall not bear interest during the construction period but interest shall commence accruing on the Completion Date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Series 1996 B Bonds shall be as set forth on Schedule Y to the Loan Agreement. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Council of the Issuer shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Original Bonds.

The Bonds shall be payable as to principal at the principal office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner of the Series 1996 B Bonds, interest on the Series 1996 B Bonds may be paid by wire transfer or other methods satisfactory to the Issuer, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Series 1996 A Bonds shall be issued in the form of a single bond, fully registered to the First National Bank, with a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided on the Debt Service Schedule and said Supplemental Resolution. Unless otherwise provided by the Supplemental Resolution, the Series 1996 B Bonds shall be issued in the form of a single bond, fully registered to the

Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreement and said Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority and the First National Bank shall not be obligated to pay any expenses of such exchange.

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

Section 4.02. Execution of Bonds. Said Bonds shall be executed in the name of the Issuer by the Mayor and attested by the Recorder, and the seal of the Issuer shall be affixed thereto or unprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 4.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 4.08, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 4.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

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

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

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

Section 4.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the Issuer. If 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 therefor.

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

Section 4.06. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or any interest thereon.

Section 4.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Original Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 4.08. Form of Original Bonds. The text of each series of Original Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

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[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS  
CITY OF ST. MARYS  
COMBINED  
WATERWORKS AND SEWERAGE SYSTEM  
REVENUE REFUNDING BONDS, SERIES 1996 A

No. R-\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That the City of St. Marys, a municipal corporation of the State of West Virginia, in Pleasants County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to The First National Bank of St. Marys (the "First National Bank"), or registered assigns, the sum of \_\_\_\_\_ (\$\_\_\_\_\_), in annual installments on the 1st day of \_\_\_\_\_ in each year commencing \_\_\_\_\_, 199\_, as set forth on the "Annual Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference.

Interest shall be payable in semiannual installments on the 1st day of \_\_\_\_\_ and the 1st day of \_\_\_\_\_, in each year commencing \_\_\_\_\_, 199\_, at the rate of five and one-half percent (5½%) per annum. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, as Paying Agent. The interest on this Bond is payable by check or draft mailed to the First National Bank at the address as it appears on the books of the Registrar on the interest payment date or by such other method as shall be mutually agreeable so long as the First National Bank is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part; provided, however, that notice in writing of such redemption shall be given to the registered holder hereof by registered or certified mail not less than thirty days prior to the date fixed for redemption.

This Bond is issued (i) to refund the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1982 and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1996, and a Supplemental Resolution adopted

by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1996 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND 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 COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B (THE "SERIES 1996 B BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues to be derived from the operation of the System on a parity with the pledge of Net Revenues in favor of the holders of the Series 1996 B Bonds, and moneys in the Reserve Accounts created under the Ordinance and unexpended proceeds of the Bonds (the "Bond Proceeds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with or prior to the Bonds including the Series 1996 B Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Accounts an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith including the Series 1996 B Bonds in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Ordinance, only upon the books of \_\_\_\_\_, \_\_\_\_\_, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 1996.

THE CITY OF ST. MARYS

[SEAL]

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

\_\_\_\_\_

as Registrar

By \_\_\_\_\_

Its Authorized Officer

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

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto  
\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of  
the said City with full power of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

[FORM OF BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS  
CITY OF ST. MARYS  
WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 1996 B

No. R-\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ST. MARYS, a municipal corporation of the State of West Virginia, in Pleasants County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority"), or registered assigns, the sum of \_\_\_\_\_ (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September, and the 1st day of December in each year commencing \_\_\_\_\_, 199\_, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest. The SRF Administrative Fee (as defined in the hereinafter described Ordinance) shall also be payable quarterly on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December, commencing \_\_\_\_\_, 199\_, as set forth on Exhibit B attached hereto.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, 1996, among the Authority, the DEP and the Issuer.

This Bond is issued (i) to pay costs of design of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the Issuer (the "Project"), and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1996, and a Supplemental Resolution adopted by the Issuer on the \_\_ day of \_\_\_\_\_, 1996 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

**THIS BOND 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 COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1996 A (THE "SERIES 1996 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH.**

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues to be derived from the operation of the System on a parity with the pledge of Net Revenues in favor of the holders of the Series 1996 A Bonds, and moneys in the Reserve Accounts created under the Ordinance and unexpended proceeds of the Bonds (the "Bond Proceeds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with or prior to the Bonds including the Series 1996 A Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Accounts an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith including the Series 1996 A Bonds in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 1996.

THE CITY OF ST. MARYS

[SEAL]

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Recorder

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

**This Bond is one of the Series 1996 B Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.**

\_\_\_\_\_ ,  
as Registrar

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

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

**EXHIBIT A**  
**RECORD OF ADVANCES**

Amount	Date	Amount	Date
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
<b>TOTAL \$ _____</b>			

**EXHIBIT B**

**SCHEDULE OF ANNUAL DEBT SERVICE**

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto  
\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of  
the said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

**Section 4.09. Sale of Original Bonds: Ratification and Execution of Loan Agreement with Authority and DEP.** The Series 1996 A Bonds shall be sold to the First National Bank. The Series 1996 B Bonds for each phase shall be sold to the Authority, pursuant to the respective terms and conditions of the Loan Agreement. As a ratification of the resolution of Council authorizing execution of the Loan Agreement, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority and DEP. The Loan Agreement is specifically incorporated into this Ordinance.

**Section 4.10. Certificate of Consulting Engineers.** Prior to the issuance of the Series 1996 B Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement to the effect that the Project has been or will be designed as provided in the Program application or constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, as the case may be, the Project is or will be adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of the design or acquisition and construction, as the case may be, of the Project.

**Section 4.11. Amended Schedule A Filing.** Within 60 days following the Completion Date the Issuer will file with the Authority its schedule in substantially the form of "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE V  
[RESERVED]

**ARTICLE VI**  
**SYSTEM REVENUES AND APPLICATION THEREOF**

**Section 6.01. Establishment of Funds and Accounts with Depository Bank.** The following special funds or accounts are created with and shall be held by the Depository Bank:

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

**Section 6.02. Establishment of Funds and Accounts with Commission.** The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

- (1) Series 1996 A Bonds Sinking Fund;
  - (a) Within the Series 1996 A Bonds Sinking Fund, the Series 1996 A Bonds Reserve Account.
- (2) Series 1996 B Bonds Sinking Fund;
  - (a) Within the Series 1996 B Bonds Sinking Fund, the Series 1996 B Bonds Reserve Account.

**Section 6.03. System Revenues: Flow of Funds.** A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

(1) The Issuer shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month (i) commencing 6 months prior to the first date of payment of interest on the Series 1996 A Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1996 A Bonds on the next ensuing semiannual interest payment date; provided, that, in the event the period to elapse

between the date of such initial deposit in the Sinking Fund and the next semiannual interest payment date is less than 6 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 12 months prior to the first date of payment of principal on the Series 1996 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1996 A Bonds on the next ensuing annual principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next annual principal payment date is less than 12 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 6.03(2) and to the extent that Net Revenues are insufficient to make all of the payments such payments shall be made pro rata among each series of Bonds.

(3) The Issuer shall next, on the first day of each month (i) commencing 3 months prior to the first date of payment of interest on the Series 1996 B Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on the Series 1996 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 Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 3 months prior to the first date of payment of principal on the Series 1996 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said Series 1996 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 Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 6.03(3) and to the extent that Net Revenues are insufficient to make all of the payments such payments shall be made pro rata among each series of Bonds.

(4) The Issuer shall next transfer from the Revenue Fund and pay to the Commission on the first day of each month, commencing 12 months prior to the first date of payment of principal of the Series 1996 A Bonds, if not fully funded upon issuance of the Bonds, for deposit in the Series 1996 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1996 A Bonds Reserve Requirement; provided, that no further payments shall

be made into the Series 1996 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 1996 A Bonds Reserve Requirement.

(5) The Issuer shall next transfer from the Revenue Fund and pay to the Commission on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Series 1996 B Bonds, if not fully funded upon issuance of the Bonds, for deposit in the Series 1996 B Bonds Reserve Account, an amount equal to 1/120 of the Series 1996 B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1996 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 1996 B Bonds Reserve Requirement.

(6) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts [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 Sinking Funds shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Accounts in the Sinking Funds shall be used only for the purpose of paying principal of or interest on the Bonds, as the same shall come due, when other moneys in the Sinking Funds are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the Series 1996 A Bonds Reserve Account shall be transferred, not less than once each year, to the Series 1996 A Bonds Sinking Fund and all investment earnings on the moneys in the Series 1996 B Bonds Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Series 1996 B Bonds Sinking Fund.

Any withdrawals from the Reserve Accounts which result in a reduction in the balance of the Reserve Accounts to an amount below the Reserve Requirements shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Funds for payment of debt service on the Bonds have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Funds

sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Accounts in an amount equal to the Reserve Requirements.

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

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

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

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

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges then due.

Simultaneously with the deposit made to the Commission pursuant to Section 6.03(3) the Issuer shall remit to the Commission the SRF Administrative Fee in connection with the Series 1996 B Bonds.

The Issuer shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month for the Series 1996 B Bonds.

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

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

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

Section 6.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Series 1996 B Bonds not required for the Project Costs in the Series 1996 B Bonds Reserve Account to the extent that the balance therein is not equal to the Series 1996 B Bonds Reserve Requirement.

## ARTICLE VII

### APPLICATION OF ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 7.01. Application of Series 1996 A Bond Proceeds. From the moneys received from the sale of the Series 1996 A Bonds, the Issuer shall pay in full the principal of, redemption premium, if any, and interest on, the Series 1982 Bonds, to the Holder of the Series 1982 Bonds.

Section 7.02. Application of Series 1996 B Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Series 1996 B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. The amount of the proceeds which together with the earnings thereon shall be at least sufficient to pay interest on the Series 1996 B Bonds for the period specified in the Supplemental Resolution shall be deposited in the Series 1996 B Bonds Sinking Fund, if any; provided, that such period may not extend beyond the date which is six months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1996 B Bonds, there shall be deposited with the Commission in the Series 1996 B Bonds Reserve Account the sum, if any, set forth in the Supplemental Resolution for funding of the Series 1996 B Bonds Reserve Account.

C. The remaining moneys derived from the sale of the Series 1996 B Bonds shall be deposited by the Issuer as received from time to time in the Bond Construction Trust Fund hereinafter established.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bond Construction Trust Fund". The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Ordinance. Except with respect to any transfers to the Rebate Fund, moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

Section 7.03. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Series 1996 B Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 7.02 hereof, disbursements from the Series 1996 B Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) A "Payment Requisition Form," attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by the Mayor and the Consulting Engineers, stating:

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

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

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

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

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

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

## ARTICLE VIII

### ADDITIONAL COVENANTS OF THE ISSUER

**Section 8.01. General Covenants of the Issuer.** All the covenants, agreements and provisions set forth in this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article VIII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is Outstanding and unpaid.

**Section 8.02. Bonds not to be Indebtedness of the Issuer.** The 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 Ordinance. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

**Section 8.03. Bonds Secured by Pledge of Net Revenues.** The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and for the other purposes provided in the Ordinance.

**Section 8.04 Rates and Charges.** The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the rate ordinance of the Issuer enacted October 11, 1994 and as amended September 19, 1995.

**Section 8.05. Rates.** Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser

thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirements is on deposit in the Reserve Accounts and the reserve accounts for the Bonds is funded at least at the requirement provided for in the Ordinance such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds.

Section 8.06. Completion, Operation and Maintenance; Schedule of Cost. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Ordinance.

Upon completion of the Project, the Issuer shall file with the Authority a schedule in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 8.07. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Council may then, if it be so advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars (\$10,000), or authorize such sale, lease or other disposition of such property upon public bidding if the

amount to be received therefor is in excess of ten thousand dollars (\$10,000) but not in excess of fifty thousand dollars (\$50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of \$10,000, shall be deposited in the Renewal and Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the Issuer to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars (\$50,000) and insufficient to pay or redeem prior to maturity all the Bonds then Outstanding without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 8.08. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances.** The Issuer shall not issue any other obligations whatsoever, except *pari passu* additional Bonds provided for in Section 8.09 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 8.09 hereafter. All obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds to the extent such are Outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the 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, except with respect to said *pari passu* additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the Project, payable from the revenues of the

System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 8.09. Parity Bonds. A. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions, in the manner herein provided and with the prior written consent of the Authority and the DEP and in compliance with the conditions and requirements herein provided.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on the following:

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

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made

and signed by the Consulting Engineers and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

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

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Authority and anything to the contrary in this Section 8.09 notwithstanding, Parity Bonds may be authorized and issued by the Issuer pursuant to Supplemental Resolution solely to complete the Project as described in the Issuer's Program application to the Authority and DEP in accordance with the plans

and specifications, in the event that the Original Bonds should be insufficient, together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the Recorder a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

**Section 8.10. Insurance and Construction Bonds.** The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and the DEP, so long as the Authority is the Owner of the Bonds. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority and DEP and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

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.

**Section 8.11. Consulting Engineers.** The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers. Such resident engineer

shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a Performance Certificate, the form of which is attached as Exhibit A to the Loan Agreement, and is incorporated herein by reference, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

**Section 8.12. Compliance With Loan Agreement Rules and Regulations.** The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

**Section 8.13. No Free Services.** The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 8.14. Enforcement of Collections.** The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 8.15. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 8.16. Books, Records and Facilities. 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 and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreement or Grant Receipts or other sources of financing for the Project.

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

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the West Virginia Public Service Commission and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Council shall direct.

The Issuer shall file with the Consulting Engineers and the Authority and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds, Notes or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority and the DEP. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreement and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The Issuer shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report, the form of which is attached to the Loan Agreement as Exhibit B and is incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and the DEP.

The Issuer shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the Issuer's construction schedule.

The Board shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

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

Section 8.17. Operating Budget. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 8.18. Mandatory Connection. The mandatory use of the sewerage facilities portion of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sewerage facilities portion of the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is

such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the sewerage facilities portion of the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the sewerage facilities portion of the System, pay the rates and charges established therefor.

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

Section 8.19. Compliance with Loan Agreement. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

Section 8.20. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PUBLIC PURPOSE BONDS**. The Issuer shall use the Series 1996 A Bond proceeds solely for the refunding and as otherwise set forth herein. The Issuer shall use the Series 1996 B Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as local governmental activity of the Issuer.

B. **PRIVATE ACTIVITY BOND COVENANT**. The Issuer shall not permit at any time or times any of the proceeds of the Original Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Original Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Original Bonds.

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

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

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

F. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Original Bonds will be and remain excludible from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

**Section 8.21. Statutory Mortgage Lien.** For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Original Bonds and shall be for the benefit of all Owners of the Original Bonds.

**Section 8.22. Rebate Covenant.** The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Original Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the Issuer. The Issuer reasonably expects it and all its subordinate entities to issue less than \$5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1996, in which the first series of Original Bonds are to be issued. Therefore, the Issuer believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Issuer is in fact subject to such rebate requirements, the Issuer hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further described in Section 8.03. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Original Bonds.

**Section 8.23. Securities Compliance.** The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notice of changes in usage and customer base ) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17CFR Part 240).

## ARTICLE IX

### INVESTMENT OF FUNDS; NON-ARBITRAGE

**Section 9.01. Investments.** Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 9.01 and in Sections 9.02 and 9.03.

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

**Section 9.02. Arbitrage.** The Issuer covenants that (i) it will restrict the use of the proceeds of the Original Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Original Bonds, so that the Original Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Original Bonds so that the interest on the Original Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 9.03. Tax Certificate and Rebate.** The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Original Bonds. In addition, the Issuer covenants to comply with all regulations from time to time in effect and applicable to the Original Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds used to fund the purchase of the

1995 Subordinate Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the Issuer does not qualify for an exception to Section 148 of the Code or the Issuer is otherwise subject to rebate in connection with the Original Bonds, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 9.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 9.03 in accordance with the requirements of Section 148(f) of the Code. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto

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

The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

Section 9.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

## ARTICLE X

### DEFAULT AND REMEDIES

Section 10.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

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

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

(C) If the 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 10.02. Remedies. Upon the happening and continuance of any Event of Default with respect to any Bonds, any Registered Owner of such 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 Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon such Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the registered Owners of such Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to such Bonds, or the rights of such registered Owners.

Section 10.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the Issuer under the Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate

legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

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

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

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

## ARTICLE XI

### DEFEASANCE

**Section 11.01. Defeasance of Bonds.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient to pay, as and when due, the principal of and interest on the Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Issuer, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

ARTICLE XII  
MISCELLANEOUS

Section 12.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 12.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 12.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extent of such conflict repealed.

Section 12.04. Covenant of Due Procedure. 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 final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of Council were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 12.05. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

Section 12.06. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the St. Marys Oracle and The Pleasants Leader, newspapers of general circulation in the City of St. Marys, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Issuer upon a certain date, not less than ten days subsequent

to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Issuer for review by interested persons during office hours of the Issuer. The Council hereby determines that the Abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Issuer shall take such action as it shall deem proper in the premises.

First Reading: September 17, 1996

Second Reading  
and Passage: October 1, 1996

Public Hearing: October 15, 1996

(SEAL)

THE CITY OF ST. MARYS

By: *James T. Flade*  
Mayor

ATTEST:

*Linda R. Hoover*  
Recorder

This Ordinance was placed into effect following the public hearing held on October 15, 1996.

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Recorder of the Issuer of St. Marys, Pleasants County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of St. Marys, such records being in the custody of the undersigned and maintained at the City of St. Marys, Municipal Building, St. Marys, Pleasants County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 15th day of October, 1996.

  
Recorder

[SEAL]

CHASF53:47209

**EXHIBIT A**

**Description of Project**

The Project consists of the design of certain improvements to the Issuer's waste water treatment plant including a new grit chamber, mechanical bar screen, clarifier, belt filter press, UV disinfection, electric controls, laboratory equipment and all necessary applications thereto.

**EXHIBIT B**

**Commitment Letter**



CARL A. GUTHRIE  
PRESIDENT

P. O. BOX 180 - ST. MARYS, WEST VIRGINIA 26170 - (304) 684-2255

August 8, 1996

Louis F. Flakt, Mayor  
City of St. Marys  
418 Second Street  
St. Marys, WV 26170

RE: City of St. Marys Water & Sewer Bonds. Series 1982

Dear Mayor Flade:

Please be advised that The First National Bank will purchase the "Refunding Bonds" designed to replace the above referenced issue with an outstanding balance of approximately \$57,600 for a term not to exceed the "Prior Bond" at a tax exempt interest rate of 5 1/2% per annum.

It is my understanding that this transaction will be consummated during the fourth quarter of 1996.

Thank you for the opportunity to provide this service to the City.

Sincerely,

Carl A. Guthrie  
President

CAG/sll

cc: Samme L. Gee, Esq.

EXHIBIT C

CITY OF ST. MARYS, WEST VIRGINIA

NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October 1, 1996, the Council of the City of St. Marys, West Virginia (the "City") adopted an ordinance which:

1. Authorized the refunding of the Sewerage System Revenue Bonds, Series 1982 through the issuance of not more than \$60,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A (the "Series 1996 A Bonds") to achieve an interest rate savings and authorized the design of certain extensions, additions, betterments and improvements (the "Project") to the existing wastewater treatment facility portion of the combined waterworks and sewerage system ("System") of the City and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than \$128,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B (the "Series 1996 B Bonds") (the Series 1996 A Bonds, together with the Series 1996 B Bonds are hereinafter collectively referred to as the "Bonds"). The refunding of the Series 1982 Bonds and design of the project was authorized to be financed with the Bonds proceeds.

2. Directed that the interest rate on the Series 1996 A Bonds shall be no more than five and one-half percent (5½%) per annum, that said Series 1996 A Bonds mature in not more than 20 years and that said Series 1996 A Bonds be sold for the par value thereof; and that such Series 1996 A Bonds be sold to the First National Bank of St. Marys.

3. Directed that the interest rate on the Series 1996 B Bonds shall be no more than three percentum (3%) per annum, that said Series 1996 B Bonds mature in not more than twenty years and that said Series 1996 B Bonds be sold for the par value thereof to the West Virginia Water Development Authority.

4. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the payments of principal and interest when due; provided for the creation of the reserve accounts and a renewal and replacement fund; and provided for the use of excess funds of the System.

5. Provided for the disbursement of the Series 1996 B Bond proceeds and created a Bond Construction Trust Fund.

6. Pledged to payment of the Bonds the Net Revenues of the System.

7. Provided upon certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project; provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

9. Established the terms for defaults and the remedies of the Bondholders.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of St. Marys at a regular meeting thereof at 7:00 p.m., prevailing time, on October 15, 1996 at the City Building, 418 Second Street, St. Marys, West Virginia, and present objections and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on October 1, 1996, is on file in the Office of the City Recorder for review by interested persons during the regular office of such office, to-wit: 8:00 a.m. to 4:00 p.m. Mondays through Fridays.

/s/ Linda Wilson  
Recorder - City of St. Marys, West Virginia

48923

**SUPPLEMENTAL RESOLUTION**

**Introduced in Council**

**November 6, 1996**

**Introduced by**

**Louis F. Flade, Mayor**

**Adopted by Council**

**November 6, 1996**

**SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1996 A AND THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; APPROVING A LOAN AGREEMENT WITH RESPECT TO THE SERIES 1996 B BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.**

**WHEREAS, the Council (the "Council") of The City of St. Marys, West Virginia (the "City") has duly and officially adopted a Bond Ordinance on October 1, 1996, (the "Ordinance"), entitled:**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$60,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1996 A, OF THE CITY OF ST. MARYS TO BE USED TO REFUND THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1982; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$128,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, OF THE CITY OF ST. MARYS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF ST. MARYS WHICH MAY BE LAWFULLY**

EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A (the "Series 1996 A Bonds") and the Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B (the "Series 1996 B Bonds") (collectively, the "Bonds") of the City of St. Marys in aggregate principal amount not to exceed \$60,000 and \$128,000, respectively, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and the Ordinance and the terms of the Loan Agreement entered into between the Issuer, the West Virginia Water Development Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment for the Series 1996 B Bonds (the "Loan Agreement"), but requires that the interest rates and sale price of the Bonds should be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for; and

WHEREAS, the First National Bank of St. Marys ("First National Bank") proposes to purchase the Series 1996 A Bonds; and

WHEREAS, West Virginia Water Development Authority ("WDA") proposes to purchase the Series 1996 B Bonds; and

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the Ordinance be placed into

effect and that the price of and the interest rate on the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. MARYS:

Section 1. It is hereby found and determined:

(A) That the Abstract and Notice was duly published in The St. Marys Oracle and The Pleasants County Leader, newspapers of general circulation in the City of St. Marys with the first publication thereof being on October 2, 1996 and October 5, 1996, respectively, which first publications were not less than ten (10) days before the day set by the Ordinance and Notice for the public hearing at which interested persons might appear before the Council of the City and present protests and suggestions and with the last publications thereof being on October 9, 1996 and October 12, 1996, respectively, which last publication dates were prior to said date set by the Ordinance and Notice for the public hearing, and a copy of the Affidavit of Publications reflecting such publications are attached hereto and incorporated herein;

(B) That in accordance with the Ordinance and the Notice, the Clerk of the City has maintained in her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) That, in Council chambers, City Building, St. Marys, West Virginia on Tuesday, October 15, 1996, at 7:00 p.m. prevailing time, in accordance with the Ordinance and Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) That, at the public hearing, no significant reasons were presented that could require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the City; and

(E) The Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

**Section 2.** Pursuant to the Ordinance, the Act, and this Supplemental Resolution, the Bonds shall be in the aggregate principal amount of \$49,000 and \$128,000, respectively, with the following provisions:

(A) The Series 1996 A Bond shall be originally issued in the form of a single bond, numbered AR-1 in the principal amount of \$49,000. The Series 1996 A Bond shall be dated the date of delivery thereof, shall bear interest at the rate of five and one-half percent (5½%) from the date of delivery. Interest shall be payable in semiannual installments on the 1st day of January and the 1st day of July, in each year commencing January 1, 1997. Principal installments are payable as set forth on the "Annual Schedule of Debt Service" attached to the Bond. The Series 1996 A Bond shall be subject to redemption prior to maturity, upon payment of principal and interest, provided that notice in writing shall be given to the registered holder hereof.

The proceeds of the Series 1996 A Bond (\$49,000), along with the sum of \$7,751.07 from the Sinking Fund (including the Reserve Account therein) for the Series 1982 A Bonds (the "Prior Bonds"), shall be wired by the West Virginia Municipal Bond Commission (the "Commission") to the First National Bank of St. Marys, for the purpose of paying the principal and interest due on the Prior Bonds. From the balance remaining in the Sinking Fund for the Prior Bonds (including the Reserve Account therein) after the above-referenced transfer, the Commission is further authorized to transfer the sum of \$9,698.94 to the Series 1996 A Reserve Account; transfer the sum of \$351.85 to the Series 1996 A Revenue Account for interest due on the Series 1996 A Bonds from November 13, 1996 to December 31, 1996; and transfer the remaining sum of \$628.84 to the Series 1996 A Revenue Fund.

(B) The Series 1996 B Bond shall be originally issued in the form of a single bond, numbered BR-1 in the principal amount of \$128,000. The Series 1996 B Bond shall be dated the date of delivery thereof, shall bear interest at the rate of two percent (2%) from the date of delivery. Principal and interest is payable quarterly on September 1, December 1, March 1 and June 1 of each of the years, 1997 through 2017, inclusive and with the final payment on September 1, 2017 and in the amounts set forth on Schedule X attached to the Loan Agreement and incorporated therein by reference, commencing December 1, 1997. The Series 1996 B Bond shall be subject to redemption upon the written consent of the Authority, upon payment of principal, interest and redemption premium, if any, and subject to the other requirements provided in the Loan Agreement, as long as the Authority or DEP shall be the registered owner of the Series 1996 B Bond.

(C) The Bonds shall be executed by Mayor of the City by his manual signature and attested by the City Recorder of the City by her manual signature and the seal of the City shall be impressed thereon. The seal impressed upon this Resolution is hereby

adopted as the official seal of the City. The Series 1996 A Bond shall be sold to First National Bank in accordance with the terms of the Commitment Letter at a price equal to 100% of the principal amount thereof. The Series 1996 B Bond shall be sold to the Authority in accordance with the terms of the Loan Agreement at a price equal to 100% of the principal amount thereof.

Section 3. All other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the City. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 4. The City does hereby ratify, approve and accept the Commitment Letter from the First National Bank regarding the purchase of the Series 1996 A Bonds, a copy of which is incorporated herein by reference.

Section 5. The City does hereby ratify, approve and accept the Loan Agreement including the "Schedule X" attached thereto regarding the Series 1996 B Bonds, a copy of which is incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement and the performance of the obligations contained therein, on behalf of the City have been and are hereby authorized, approved and directed.

Section 6. The City hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, as the Depository Bank, as provided in the Ordinance.

Section 7. The City hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, as Registrar for the Bonds.

Section 8. The City hereby appoints and designates the West Virginia Municipal Bond Commission (the "Commission"), Charleston, West Virginia as Paying Agent for the Bonds.

Section 9. The Mayor and the City Recorder are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bonds hereby and by the Ordinance approved and provided for, to the end that the Series 1996 A Bonds may be delivered to the First National Bank pursuant to the Commitment Letter and the Series 1996 B Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about November 13, 1996.

**Section 10.** The Series 1996 A Bonds Reserve Account shall be funded solely by the transfer from the sinking fund, including the reserve account therein, and all other funds and accounts created and maintained on behalf of the Series 1982 Bonds in an amount not to exceed \$9,698.94, the Series 1996 A Bonds Reserve Requirement.

**Section 11.** Upon the payment and retirement of the Series 1982 Bonds, the all amounts on deposit in the Renewal and Replacement Fund shall be transferred to the Renewal and Replacement Fund created under the Ordinance for the Bonds.

**Section 12.** The Issuer has either (a) funded the Series 1996 B Bonds Reserve Account to the Series 1996 B Bonds Reserve Requirement or (b) created the Series 1996 B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1996 B Bonds Reserve Account holds an amount equal to the Series 1996 B Bonds Reserve Requirement. Moneys in the Series 1996 B Bonds Reserve Account and the Series 1996 B Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 1996 B Bonds and will be not available to pay costs of the Project.

**Section 13.** The Issuer hereby determines that it will be to the benefit of the Issuer and its residents to refund on a current basis the Series 1982 Bonds to take advantage of the favorable terms available to the Issuer.

**Section 14.** The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

**Section 15.** The City hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Resolution in Qualified Investments further directed by the City.

**Section 16.** The City does hereby find and determine that the amount of bonds, other than private activity bonds which it and all subordinate entities anticipate issuing during calendar year 1996, shall not exceed \$10,000,000 and therefore the City hereby designates the Series 1996 A Bonds as "qualified-tax-exempt obligations" for purposes of Section 265(b) of the Code.

**Section 17.** The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of

the Bonds as a "private activity bond" within the meaning of the Code. The City will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 18. This Supplemental Resolution shall be effective immediately upon adoption.

Dated: November 6, 1996

THE CITY OF ST. MARYS

By: Louis Blakely  
Mayor

[SEAL]

Grinda K. Peterson  
City Recorder

31255

**CITY OF ST. MARYS**

**BOND ORDINANCE**

**Combined Waterworks and Sewerage System  
Revenue Bonds, Series 1998 A**

INDEX

	<u>PAGE</u>
 <b>ARTICLE I</b>	
<b>STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS</b> .....	1
Section 1.01. Authority of this Ordinance .....	1
Section 1.02. Definitions .....	1
Section 1.03. Ordinance Constitutes Contract .....	11
Section 1.04. Findings .....	11
 <b>ARTICLE II</b>	
<b>AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT</b> .....	14
Section 2.01. Authorization of the Project .....	14
 <b>ARTICLE III</b>	
<b>AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT</b> .....	15
Section 3.01. Authorization and Terms of Bonds .....	15
Section 3.02. Execution of Bonds .....	16
Section 3.03. Authentication and Registration .....	16
Section 3.04. Negotiability, Transfer and Registration .....	16
Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost .....	17
Section 3.06. Bonds not to be Indebtedness of the Issuer .....	17
Section 3.07. Bonds Secured by Pledge of Net Revenues .....	17
Section 3.08. Form of Bonds .....	18
Section 3.09. Sale of Bonds; Ratification and Execution of Loan Agreement with Authority .....	26
Section 3.10. Certificate of Consulting Engineers .....	26
Section 3.11. Amended Schedule A Filing .....	26
 <b>ARTICLE IV</b>	
[RESERVED] .....	27
 <b>ARTICLE V</b>	
<b>SYSTEM REVENUES AND APPLICATION THEREOF</b> .....	28
Section 5.01. Establishment of Funds and Accounts with Depository Bank ...	28
Section 5.02. Establishment of Funds and Accounts with Commission .....	28
Section 5.03. System Revenues; Flow of Funds .....	28

Section 5.04. Excess Bond Proceeds .....	31
<b>ARTICLE VI</b>	
<b>APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS .....</b>	<b>32</b>
Section 6.01. Application of Series 1998 A Bond Proceeds .....	32
Section 6.02. Disbursements From the Bond Construction Trust Fund .....	32
<b>ARTICLE VII</b>	
<b>ADDITIONAL COVENANTS OF THE ISSUER .....</b>	<b>34</b>
Section 7.01. General Covenants of the Issuer .....	34
Section 7.02. Bonds not to be Indebtedness of the Issuer .....	34
Section 7.03. Bonds Secured by Pledge of Net Revenues .....	34
Section 7.04. Rates and Charges .....	34
Section 7.05. Rates .....	34
Section 7.06. Completion, Operation and Maintenance; Schedule of Cost .....	35
Section 7.07. Sale of the System .....	35
Section 7.08. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances .....	36
Section 7.09. Parity Bonds .....	37
Section 7.10. Insurance and Construction Bonds .....	38
Section 7.11. Consulting Engineers .....	39
Section 7.12. Compliance With Loan Agreement, Rules and Regulations .....	39
Section 7.13. No Free Services .....	40
Section 7.14. Enforcement of Collections .....	40
Section 7.15. No Competing Franchise .....	40
Section 7.16. Books, Records and Facilities .....	40
Section 7.17. Operating Budget .....	42
Section 7.18. Compliance with Loan Agreement .....	42
Section 7.19. Tax Covenants .....	42
Section 7.20. Statutory Mortgage Lien .....	43
Section 7.21. Rebate Covenant .....	43
Section 7.22. Securities Compliance .....	44
<b>ARTICLE VIII</b>	
<b>INVESTMENT OF FUNDS; NON-ARBITRAGE .....</b>	<b>45</b>
Section 8.01. Investments .....	45
Section 8.02. Arbitrage .....	45
Section 8.03. Tax Certificate and Rebate .....	45
Section 8.04. Restriction of Yield and Bond Proceeds .....	47

**ARTICLE IX**

<b>DEFAULT AND REMEDIES</b> .....	<b>48</b>
Section 9.01. Events of Default .....	48
Section 9.02. Remedies .....	48
Section 9.03. Appointment of Receiver .....	48

**ARTICLE X**

<b>DEFEASANCE</b> .....	<b>50</b>
Section 10.01. Defeasance of Bonds .....	50

**ARTICLE XI**

<b>MISCELLANEOUS</b> .....	<b>51</b>
Section 11.01. Modification or Amendment .....	51
Section 11.02. Severability of Invalid Provisions .....	51
Section 11.03. Repeal of Conflicting Ordinances .....	51
Section 11.04. Covenant of Due Procedure .....	51
Section 11.05. Effective Date .....	51
Section 11.06. Statutory Notice and Public Hearing .....	51

**EXHIBIT A - Description of Project**

**EXHIBIT B - Notice of Public Hearing and Abstract of Ordinance**

BOND ORDINANCE

Introduced in Council

Tuesday, May 19, 1998

Introduced by  
Mayor Pro-tem  
Larry Burns

Passed by Council

June 2, 1998

An Ordinance authorizing the issuance of not more than \$700,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, of the City of St. Marys to be used, along with other funds and moneys of, or available to, the City of St. Marys which may be lawfully expended for such purposes, to finance the cost of certain extensions, additions, betterments and improvements to the water distribution facility portion of the combined waterworks and sewerage system of the City of St. Marys and to pay other costs in connection therewith; providing for the rights and remedies of and security for the owners of such bonds; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming a loan agreement or loan agreements relating to such bonds; authorizing the sale and providing for the terms and provisions of such bonds and adopting other provisions related thereto.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ST. MARYS, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 20, and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise.

A. "Act" shall mean collectively Chapter 8, Article 20, and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1998 A Bonds, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Authorized Officer" means the Mayor of the Issuer or any other person duly appointed as such by the Council.

D. "Board" shall mean the Water and Sewer Board of the Issuer, as created and appointed by ordinance enacted by the Council of the Issuer pursuant to the provisions of Section 18 of the Act, and any successor thereto.

E. "Bond Construction Trust Fund" shall mean the fund created by Section 6.01 hereof.

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

G. "Bond Register" means the books of the Issuer as hereinafter defined, maintained by the Bond Registrar as hereinafter defined for the registration and transfer of the Bonds.

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

I. "Bonds" or "Series 1998 A Bonds" shall mean the City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, originally authorized hereby, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

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

K. "Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bonds in substantially the form set forth in the Bond Form contained herein.

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

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

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

O. "Consulting Engineers" shall mean S & S Engineers, Inc., Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

Q. "Council" shall mean the Council of the Issuer.

R. "Debt Service" shall mean the scheduled amount of interest and amortization of principal payable on the Series 1998 A Bonds, as hereinafter defined, during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

S. "Depository Bank" shall mean a bank eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC, as hereinafter defined and any successor thereto and designated as such in the Supplemental Resolution, as hereinafter defined.

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

(A) The excess of

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

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

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

U. "FDIC" shall mean the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

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

W. "Government Obligations" shall mean direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

X. "Grant" shall mean any grant or grants received by the Issuer in aid of the cost of the acquisition and construction of the Project, and specifically includes a grant from the County Commission of Pleasants County, West Virginia, in the amount of \$200,000.

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

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

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

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Series 1998 A Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1998 A Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1998 A Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior obligations and which are deemed to become proceeds of the Series 1998 A Bonds ratably as original proceeds of the Series 1998 A Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds [as referenced in clauses (i) through (iii) above] of the Series 1998 A Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Series 1998 A Bonds Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1998 A Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1998 A Bonds; and

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

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

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

DD. "Investment Property" shall mean any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property or residential rental property for family units which is not located within the jurisdiction of the city and which is not acquired to implement a court ordered or approved

housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

EE. "Issuer" shall mean the City of St. Marys, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any department, board, organizing or instituting thereof in control of the management and operation of the System, as hereinafter defined.

FF. "Loan Agreement" shall mean the Agreement by and between the Authority and the Issuer, pursuant to which the Authority shall agree, subject to the Issuer's satisfying certain engineering, legal and other requirements, to purchase the Series 1998 A Bonds.

GG. "Mayor" shall mean the Mayor of the Issuer.

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

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

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

KK. "Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Registrar and Paying Agent (both 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.

LL. "Ordinance" or "this Ordinance" shall mean this ordinance as hereafter amended or supplemented.

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

NN. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof, payable from Net Revenues on a parity with the Series 1998 A Bonds.

OO. "Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the Issuer.

PP. "Prior Bonds" shall mean the not more than \$60,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A of the Issuer and the not more than \$128,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B of the Issuer.

QQ. "Prior Ordinance" shall mean the Ordinance enacted October 1, 1996, with respect to the Prior Bonds.

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

SS. "Program" means the Authority's loan program, under which the Authority purchases the revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of sewer development revenue bonds issued by the Authority or any successor to said program as currently constituted.

TT: "Project" shall mean the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks portion of the System, a description of which is set forth in Exhibit A hereto.

UU. "PSC" means the Public Service Commission of West Virginia and any successors to the functions thereof.

VV. "PSC Order" means the recommended decision of the PSC regarding the acquisition and construction of the Project which grants the Issuer a certificate of convenience and necessity and approval of financing.

WW. "Purchase Price," for the purpose of computation of the Yield of the Series 1998 A Bonds, has the same meaning as the term "Issue Price" in Sections 1273(b) and 1274 of the Code and, in general, means the initial offering price of the Series 1998 A Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1998 A Bonds of each maturity is sold or, if the Series 1998 A Bonds are privately placed, the price paid by the first buyer of the Series 1998 A Bonds or the acquisition costs of the first buyer. Purchase Price for purposes of computing Yield of Nonpurpose Investments means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1998 A Bonds for acquisition thereof or, if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1998 A Bonds.

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; the Tennessee Valley Authority; or the Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligation issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC"), shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must

be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia Investment Management Board pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

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

YY. "Recorder" shall mean the Recorder of the Issuer.

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

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

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

CCC. "Series 1998 A Bonds Reserve Account" shall mean the Series 1998 A Bonds Reserve Account established in the Series 1998 A Bonds Sinking Fund pursuant to Section 5.02(1) hereof.

DDD. "Series 1998 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1998 A Bonds in the then current or any succeeding year.

EEE. "Series 1998 A Bonds Sinking Fund" or "Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

FFF. "State" shall mean the State of West Virginia.

GGG. "Supplemental Resolution" shall mean 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 or resolutions authorizing the sale of the Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds and not so included may be included in another Supplemental Resolution.

HHH. "Surplus Revenues" shall mean the net revenues not required by this Ordinance or the Prior Ordinance to be set aside and held for the payment of or security for the Bonds or the Prior Bonds, including the reserve accounts and the renewal and replacement funds established in this Ordinance and in the Prior Ordinance.

III. "System" shall mean the complete existing combined waterworks and sewerage system now owned by the Issuer, consisting of a waterworks system in its entirety or any integral part thereof, and a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the wastewater treatment facility, hereafter acquired or constructed for said waterworks and sewerage system from any sources whatsoever, both within and without said Issuer.

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

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

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

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

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

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds and any other bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by said Issuer shall be for the equal benefit, protection and security of the legal owners of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The City of St. Marys, West Virginia, a municipal corporation and political subdivision of the State in Pleasants County of said State, now owns a combined waterworks and sewerage system consisting of a waterworks system in its entirety or any integral part thereof, including some or all of mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system, and a sewage treatment plant or plants and some or all of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes (herein referred to as the "System").

B. In accordance with Section 18 of the Act, the System is under the supervision and control of the Water and Sewer Board of the Issuer (the "Board").

C. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed the Project, consisting of waterworks plant upgrades, all of which will constitute extensions, additions, betterments and improvements to the System at an estimated cost not to exceed \$770,865.03, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications are on file with the Issuer, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and will have an estimated useful life in excess of twenty-one (21) years.

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

E. It is deemed necessary for the Issuer to issue its Series 1998 A Bonds in the aggregate principal amount of not more than \$700,000 to finance, along with a grant of \$200,000 from the Pleasants County Commission and the Issuer's contribution of \$25,865.03, the costs of the Project herein described. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; engineering, fiscal and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

F. It is in the best interests of the Issuer that its Series 1998 A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and between the Authority and the Issuer.

G. The Issuer has complied with all requirements of West Virginia law relating to the acquisition and construction of the Project and the issuance of the Bonds for the Project. The Issuer has received the approval of the West Virginia Infrastructure and Jobs Development Council and a final nonappealable order from the PSC.

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

- (1) The Issuer is a governmental unit with general taxing powers.
- (2) The Bonds are not private activity bonds as defined by the Code.
- (3) Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Bonds will be used for local governmental activities of the Issuer.
- (4) The Issuer reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Issuer and all subordinate entities thereof during the calendar year in

which the Bonds will be issued will not aggregately exceed \$5,000,000. The Issuer reasonably expects to issue the Bonds in calendar year 1998.

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

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

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

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

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of the Project. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers, and filed in the office of the Recorder. The proceeds of the Series 1998 A Bonds hereby authorized shall be applied as provided in Article VI hereof.

The Issuer has received acceptable bids for the acquisition and construction of the Project.

### ARTICLE III

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

Section 3.01. Authorization and Terms of Bonds. For the purposes of financing a portion of the costs of the acquisition and construction of the Project not otherwise provided and for paying costs of issuance, there shall be issued the Bonds of the Issuer. The Bonds shall be issued in one series to be designated "Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A" in an aggregate principal amount of not more than \$700,000. The Bonds shall be dated as of the date of delivery thereof, shall bear such interest, not exceeding six and one-eighth percent (6.125%) per annum, shall mature at such times, not exceeding twenty-one (21) years after the date of issuance, and in such amount or amounts as shall be set out in Schedule X to the Loan Agreement for the Series 1998 A Bonds. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Council of the Issuer shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds. The proceeds of the Bonds remaining after funding of the Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 6.01 hereof.

The Bonds shall be payable as to principal at the principal office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner of the Series 1998 A Bonds, interest on the Series 1998 A Bonds may be paid by wire transfer or other methods satisfactory to the Issuer, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Series 1998 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreement and said Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the Issuer by the Mayor and attested by the Recorder, and the seal of the Issuer shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

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

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

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

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

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

**Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost.** In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the Issuer. If 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 therefor.

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

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

**Section 3.07. Bonds Secured by Pledge of Net Revenues.** The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on parity with the lien of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund

hereinafter established are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

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

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[FORM OF BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF PLEASANTS  
CITY OF ST. MARYS  
WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS, SERIES 1998 A

No. R-\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ST. MARYS, a municipal corporation of the State of West Virginia, in Pleasants County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority"), or registered assigns, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), in annual installments on the 1st day of October in each year commencing \_\_\_\_\_, 199\_, 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 rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning October 1, 199\_.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the 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 Authority at the address as it appears on the books of \_\_\_\_\_ (the "Registrar") on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, 1998, between the Authority and the Issuer.

This Bond is issued (i) to pay costs of the acquisition and construction of improvements, additions, extensions and betterments to the waterworks portion of the existing combined waterworks and sewerage system of the Issuer (the "Project"), and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the

authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20, and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1998, and a Supplemental Resolution adopted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1998 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

THIS BOND 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 OUTSTANDING COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1996 A AND COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B (COLLECTIVELY, THE "PRIOR BONDS").

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

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner,

or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 1998.

THE CITY OF ST. MARYS

[SEAL]

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1998 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

\_\_\_\_\_  
as Registrar

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

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

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto  
\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of  
the said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.09. Sale of Bonds: Ratification and Execution of Loan Agreement with Authority. The Series 1998 A Bonds shall be sold to the Authority, pursuant to the respective terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority. The Loan Agreement is specifically incorporated into this Ordinance.

Section 3.10. Certificate of Consulting Engineers. Prior to the issuance of the Series 1998 A Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement to the effect that the Project will be constructed in accordance with the approved plans and specifications as submitted to the Authority, the Project will be adequate for the purposes for which it was designed, and the funding plan as submitted to the Authority is sufficient to pay the costs of the acquisition and construction of the Project.

Section 3.11. Amended Schedule A Filing. Within 60 days following the Completion Date the Issuer will file with the Authority its schedule in substantially the form of "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV  
[RESERVED]

## ARTICLE V

### SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if established in the Prior Ordinance) with and shall be held by the Depository Bank:

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

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

- (1) Series 1998 A Bonds Sinking Fund;
  - (a) Within the Series 1998 A Bonds Sinking Fund, the Series 1998 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance 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 therein and herein provided.

(1) The Issuer shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month (i) commencing 6 months prior to the first date of payment of interest on the Prior Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Prior Bonds on the next ensuing semiannual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next semiannual interest payment date is less than 6 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1998 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum

equal to 1/6th of the amount of interest which will mature and become due on said Series 1998 A Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date. When additional series of Bonds are issued, the payment of interest on said Bonds shall be made simultaneously with the payments described in this Section 5.03(2) and to the extent that Net Revenues are insufficient to make all of the payments such payments shall be made pro rata among each series of Bonds.

(3) The Issuer shall next, on the first day of each month and simultaneously with the payments required by Sections 6.03(2) and (3) of the Prior Ordinance, and without distinction or priority between the payments, commencing 13 months prior to the first date of payment of principal on the Series 1998 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1998 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1998 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 A Bonds Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date. When additional series of Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03(3) and to the extent that Net Revenues are insufficient to make all of the payments such payments shall be made pro rata among each series of Bonds.

(4) The Issuer shall next transfer from the Revenue Fund and pay to the Commission on the first day of each month and simultaneously with the transfers required by Sections 6.03(4) and (5) of the Prior Ordinance, commencing 12 months prior to the first date of payment of principal of the Series 1998 A Bonds, if not fully funded upon issuance of the Bonds, for deposit in the Series 1998 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1998 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1998 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 1998 A Bonds Reserve Requirement.

(5) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts [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 Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on the moneys in the Series 1998 A Bonds Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Series 1998 A Bonds Sinking Fund.

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

B. As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

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

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

Moneys in the Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

The Sinking Fund, including the Reserve Account therein, shall be used solely and only for, and is hereby pledged for, the purpose of servicing the Bonds and any additional Bonds ranking on a parity with them that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges then due.

The Issuer shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month for the Series 1998 A Bonds.

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

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

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

Section 5.04. Excess Bond Proceeds. After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1998 A Bonds Reserve Account, and when the Reserve Account is fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter apply such moneys in full, first to the next ensuing interest payments due on the Series 1998 A Bonds and thereafter to the next ensuing principal payments due thereon.

## ARTICLE VI

### APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 6.01. Application of Series 1998 A Bond Proceeds. From the moneys received from the sale of the Series 1998 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. The amount of the proceeds which together with the earnings thereon shall be at least sufficient to pay interest on the Series 1998 A Bonds for the period specified in the Supplemental Resolution shall be deposited in the Series 1998 A Bonds Sinking Fund, if any; provided, that such period may not extend beyond the date which is six months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1998 A Bonds, there shall be deposited with the Commission in the Series 1998 A Bonds Reserve Account the sum, if any, set forth in the Supplemental Resolution for funding of the Series 1998 A Bonds Reserve Account.

C. The remaining moneys derived from the sale of the Series 1998 A Bonds shall be deposited by the Issuer in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bond Construction Trust Fund". The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Ordinance. Except with respect to any transfers to the Rebate Fund, moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

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 6.02 hereof, disbursements from the Bond Construction Trust Fund (except for the costs of issuance of the Bonds originally authorized hereby, which shall be made upon request of the Issuer), shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

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

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

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

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

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

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

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

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

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be nor constitute an indebtedness of the 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 Ordinance. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System on parity with the lien of the Prior Bonds. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Ordinance and in the Prior Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and the Prior Bonds and for the other purposes provided in the Ordinance and the Prior Ordinance.

Section 7.04 Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the rate ordinance of the Issuer enacted March 4, 1997.

Section 7.05. Rates. Prior to issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with

respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and the Prior Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and the reserve accounts for the Bonds and the Prior Bonds are funded at least at the requirement provided for in the Ordinance such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and the Prior Bonds.

Section 7.06. Completion, Operation and Maintenance: Schedule of Cost. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Ordinance.

Upon completion of the Project, the Issuer shall file with the Authority a schedule in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 7.07. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds and the Prior Bonds then Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit pro rata in the Series 1998 A Bonds Sinking Fund and in the sinking funds established under the Prior Ordinance for any Prior Bonds then outstanding, and the Issuer shall direct the Commission to apply such proceeds pro rata to the payment of principal and any interest at maturity of Bonds and Prior Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and Prior Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Council may then, if it be so

advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars (\$10,000), or authorize such sale, lease or other disposition of such property upon public bidding if the amount to be received therefor is in excess of ten thousand dollars (\$10,000) but not in excess of fifty thousand dollars (\$50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of \$10,000, shall be deposited in the Renewal and Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the Issuer to the Commission for deposit pro rata in the Series 1998 A Bonds Sinking Fund and in the sinking funds established under the Prior Ordinance for any Prior Bonds then outstanding and shall be applied only to the redemption of Bonds or Prior Bonds of the last maturities then Outstanding or to the purchase of Bonds or Prior Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds or Prior Bonds. Such payments of such proceeds into the various funds identified in this Section 7.07 shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance or the Prior Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars (\$50,000) and insufficient to pay or redeem prior to maturity all the Bonds and Prior Bonds then Outstanding without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds and Prior Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then owners of the Bonds and Prior Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 7.08. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances.** The Issuer shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 7.09 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; **provided**, however, that additional Parity Bonds may be issued as provided in Section 7.09 hereafter. All obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds to the extent such are Outstanding; **provided**, that no such subordinate obligations shall be issued unless all payments required to be made into the Sinking Fund, the Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the

lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

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

**Section 7.09. Parity Bonds.** A. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions, in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1998 A Bonds.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on the following:

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

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be

stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such additional Parity Bonds.

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

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

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Bonds and the owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

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

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year

in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

**Section 7.10. Insurance and Construction Bonds.** The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority, so long as the Authority is the Owner of the Bonds. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

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.

**Section 7.11. Consulting Engineers.** The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications prepared by the Consulting Engineers. Such resident engineer shall certify to the Authority and the Issuer at the completion of construction that construction is in accordance with the approved plans and specifications, or amendments thereto, approved by all necessary governmental bodies. The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans to it within 60 days of the completion of the Project.

**Section 7.12. Compliance With Loan Agreement, Rules and Regulations.** The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the

Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 7.15. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.16. Books, Records and Facilities. 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 its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreement or Grant Receipts or other sources of financing for the Project.

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

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the West Virginia Public Service Commission and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Council shall direct.

The Issuer shall file with the Consulting Engineers and the Authority, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance with respect to said Bonds and the status of all said funds and accounts.
- (C) The amount of any Bonds, Notes or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreement and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The Issuer shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report, the form of which is attached to the Loan Agreement as Exhibit B and is incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

The Board shall permit the Authority, or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Board 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 7.17. Operating Budget.** The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

**Section 7.18. Compliance with Loan Agreement.** The Issuer agrees to comply with all the terms and conditions of the Loan Agreement.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PUBLIC PURPOSE BONDS.** The Issuer shall use the Series 1998 A Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as local governmental activity of the Issuer.

B. **PRIVATE ACTIVITY BOND COVENANT.** The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

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

D. **FEDERAL GUARANTEE PROHIBITION.** The 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 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

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

F. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludible from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 7.20. Statutory Mortgage Lien. For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Owners of the Bonds on parity with the lien of the Prior Bonds.

Section 7.21. Rebate Covenant. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with

respect to the Code) of the Bonds will be used for local governmental activities of the Issuer. The Issuer reasonably expects it and all its subordinate entities to issue less than \$5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1998, in which the first series of Bonds are to be issued. Therefore, the Issuer believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Issuer is in fact subject to such rebate requirements, the Issuer hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further described in Section 8.03. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

**Section 7.22. Securities Compliance.** The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notice of changes in usage and customer base ) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17CFR Part 240).

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON-ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

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

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds used to fund the purchase of the 1995 Subordinate Bonds and fully comply with Section 148(f) of the Code, and covenants to take

such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the Issuer does not qualify for an exception to Section 148 of the Code or the Issuer is otherwise subject to rebate in connection with the Bonds, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 9.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 9.03 in accordance with the requirements of Section 148(f) of the Code. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the Issuer shall submit to the Authority a certificate stating that it

is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as defined in the Code).

The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

Section 8.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE IX  
DEFAULT AND REMEDIES

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

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

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

(C) If the 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 with respect to any Bonds, any Registered Owner of such 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 Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon such Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the registered Owners of such Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to such Bonds, or the rights of such registered Owners.

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the Issuer under the Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate

legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

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

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

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

## ARTICLE X

### DEFEASANCE

**Section 10.01. Defeasance of Bonds.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient to pay, as and when due, the principal of and interest on the Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Issuer, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 11.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 11.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extent of such conflict repealed, provided nothing herein repeals the Prior Ordinance.

Section 11.04. Covenant of Due Procedure. 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 final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of Council were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 11.05. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

Section 11.06. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit B attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the St. Marys Oracle and The Pleasants Leader, newspapers of general circulation in the City of St. Marys, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Issuer upon a certain date, not less than ten days subsequent

to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Issuer for review by interested persons during office hours of the Issuer. The Council hereby determines that the Abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Issuer shall take such action as it shall deem proper in the premises.

First Reading: May 19, 1998

Second Reading  
and Passage: June 2, 1998

Public Hearing: June 16, 1998

THE CITY OF ST. MARYS

(SEAL)

By: Louis T. Wade  
Mayor

ATTEST:

Linda K. Wilson  
Recorder

This Ordinance was placed into effect following the public hearing held on June 16, 1998.

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Recorder of the Issuer of St. Marys, Pleasants County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of St. Marys, such records being in the custody of the undersigned and maintained at the City of St. Marys, Municipal Building, St. Marys, Pleasants County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 16th day of June, 1998.

David W. Wilson  
Recorder

[SEAL]

CHASFS3:120410

## EXHIBIT A

### Description of Project

The Project consists of the connection of two water wells in Harmony Acres to a new 8-inch raw water transmission line, the construction of a new 500 GPM water treatment plant consisting of three aeration units, chemical feed equipment for chlorine gas, flouride, corrosion inhibitor and soda ash, a 32,044 gallon baffled clearwell, two high service pumps and all necessary valves, controls and appurtenances. The facilities will serve approximately 1,152 customers in the City of St. Marys and one resale customer, Rt. 16 Water Association.

**EXHIBIT B**

**CITY OF ST. MARYS, WEST VIRGINIA**

**NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE**

Notice is hereby given to any person interested that on \_\_\_\_\_, 1998, the Council of the City of St. Marys, West Virginia (the "City") adopted an ordinance which:

1. Authorized the acquisition and construction certain additions, extensions, betterments and improvements (the "Project") to the existing combined waterworks and sewerage system of the City (the "System") and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than \$700,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (the "Bonds"). The Project, estimated at \$770,865.03, was authorized to be financed with the Bond proceeds as well as a grant to the City from the Pleasants County Commission and a contribution by the City.

2. Directed that the Bonds be issued in one series and in the form of one bond, fully registered with a payment record attached; that said Bonds mature in not more than twenty-one years and bear interest at a rate not to exceed six and one-eighth percent (6.125%); that the Bonds be executed in the name of the City by the Mayor, and the seal of the City be affixed thereto and attested to by the Recorder; that such Bonds be duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser thereof.

3. Directed the continuation of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of a reserve account for the Bonds and a Renewal and Replacement Fund; and provided for the use of excess funds of the System.

4. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

5. Pledged to payment of the Bonds the Net Revenues of the System on a parity with the City's outstanding Combined Waterworks and Sewerage System Revenue Refunding Bonds, Series 1996 A, and the City's Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B.

6. Provided upon certain conditions for the issuance of additional bonds.

7. Provided for insurance coverage on the Project; provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

8. Established the terms for defaults and the remedies of the Bondholders.

9. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of St. Marys at a regular meeting thereof at 7:00 p.m., prevailing time, on \_\_\_\_\_, 1998, at the City Building, 418 Second Street, St. Marys, West Virginia, and present objections and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of the City on \_\_\_\_\_, 1998, is on file in the office of the City Recorder for review by interested persons during the regular hours of such office, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

*/s/* \_\_\_\_\_  
Recorder -- City of St. Marys,  
West Virginia

**SUPPLEMENTAL RESOLUTION**

**Introduced in Council**

**June 16, 1998**

**Introduced by**

**Mayor Flade**

**Adopted by Council**

**June 16, 1998**

**SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A; DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; APPROVING A LOAN AGREEMENT WITH RESPECT TO THE SERIES 1998 A BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.**

**WHEREAS, the Council (the "Council") of The City of St. Marys, West Virginia (the "City") has duly and officially adopted a Bond Ordinance on June 2, 1998, (the "Ordinance"), entitled:**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$700,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, OF THE CITY OF ST. MARYS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF ST. MARYS WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER DISTRIBUTION FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION**

AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (the "Bonds") of The City of St. Marys in aggregate principal amount not to exceed \$700,000, all in accordance with Chapter 8, Article 20, and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (the "Act"), and the Ordinance and the terms of the Loan Agreement to be entered into between the Issuer and the West Virginia Water Development Authority (the "Authority") for the Bonds (the "Loan Agreement"), but requires that the interest rates and sale price of the Bonds should be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for; and

WHEREAS, the Authority proposes to purchase the Bonds; and

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the Ordinance be placed into effect and that the price of and the interest rate on the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. MARYS:

Section 1. It is hereby found and determined:

(A) That the Abstract and Notice was duly published in The St. Marys Oracle and The Pleasants County Leader, newspapers of general circulation in the City of St. Marys with the first publications thereof being on June 3, 1998 and June 6, 1998, respectively, which first publications were not less than ten (10) days before the day set by the Ordinance and Notice for the public hearing at which interested persons might appear before the Council of the City and present protests and suggestions and with the last publications thereof being on June 10, 1998 and June 13, 1998, respectively, which last publication dates were prior to said date set by the Ordinance and Notice for the public

hearing, and a copy of the Affidavits of Publications reflecting such publications are attached hereto and incorporated herein;

(B) That in accordance with the Ordinance and the Notice, the Recorder of the City has maintained in her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) That, in Council Chambers, City Building, St. Marys, West Virginia on Tuesday, June 16, 1998, at 7:00 p.m. prevailing time, in accordance with the Ordinance and Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) That, at the public hearing, no significant reasons were presented that could require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the City; and

(E) The Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Ordinance, the Act, and this Supplemental Resolution, the Bonds shall be originally issued in the form of a single bond, numbered R-1, in the principal amount of \$554,000. The Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of five and seventy-five hundredths percent (5.75%) from the date of delivery. Interest shall be payable in annual installments on the 1st day of October in each year commencing October 1, 1998. Principal installments are payable as set forth on the "Annual Schedule of Debt Service" attached to the Bonds commencing October 1, 1999, to and including October 1, 2018. The Bonds shall be subject to redemption prior to maturity, upon payment of principal, interest and premium, if any, but only with the prior written consent of the Authority.

The Bonds shall be executed by Mayor of the City by his manual signature and attested by the Recorder of the City by her manual signature and the seal of the City shall be impressed thereon. The seal impressed upon this Resolution is hereby adopted as the official seal of the City. The Bonds shall be sold to the Authority in accordance with the terms of the Loan Agreement at a price equal to 100% of the principal amount thereof.

Section 3. All other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance

with such changes, insertions and omissions as may be approved by the Mayor of the City. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 4. The City does hereby ratify, approve and accept the Loan Agreement including the "Schedule X" attached thereto regarding the Bonds, a copy of which is incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement and the performance of the obligations contained therein, on behalf of the City have been and are hereby authorized, approved and directed.

Section 5. The City hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, as the Depository Bank, as provided in the Ordinance.

Section 6. The City hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, as Registrar for the Bonds.

Section 7. The City hereby appoints and designates the West Virginia Municipal Bond Commission (the "Commission"), Charleston, West Virginia, as Paying Agent for the Bonds.

Section 8. The Mayor and the Recorder are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, 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 June 18, 1998.

Section 9. The Issuer has either (a) funded the Series 1998 A Bonds Reserve Account to the Series 1998 A Bonds Reserve Requirement or (b) created the Series 1998 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1998 A Bonds Reserve Account holds an amount equal to the Series 1998 A Bonds Reserve Requirement. Moneys in the Series 1998 A Bonds Reserve Account and the Series 1998 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will be not available to pay costs of the Project.

Section 10. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 11. The City hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Resolution in Qualified Investments further directed by the City.

2.6

**THE CITY OF ST. MARYS**  
**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**  
**SERIES 2003 A**  
**(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**BOND ORDINANCE**

**Table of Contents**

<b>Subject</b>	<b>Page</b>
----------------	-------------

**ARTICLE I**  
**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01	Authority for this Ordinance	1
Section 1.02	Findings	2
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	4

**ARTICLE II**  
**AUTHORIZATION OF DESIGN OF THE PROJECT**

Section 2.01	Authorization of Design of the Project	12
--------------	--	----

**ARTICLE III**  
**AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND**  
**SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN**  
**AGREEMENT**

Section 3.01	Authorization of Bonds	13
Section 3.02	Terms of Bonds	13
Section 3.03	Execution of Bonds	14
Section 3.04	Authentication and Registration	14
Section 3.05	Negotiability, Transfer and Registration	14
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	15
Section 3.07	Bonds not to be Indebtedness of the Issuer	15

Section 3.08	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	16
Section 3.09	Delivery of Bonds	16
Section 3.10	Form of Bonds FORM OF BOND	16 17
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	26
Section 3.12	Filing of Amended Schedule	26

**ARTICLE IV  
[RESERVED]** 27

**ARTICLE V  
FUNDS AND ACCOUNTS; SYSTEM REVENUES  
AND APPLICATION THEREOF**

Section 5.01	Establishment of Funds and Accounts with Depository Bank	28
Section 5.02	Establishment of Funds and Accounts with Commission	28
Section 5.03	System Revenues; Flow of Funds	28

**ARTICLE VI  
BOND PROCEEDS**

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	33
Section 6.02	Disbursements of Bond Proceeds	33

**ARTICLE VII  
ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01	General Covenants of the Issuer	35
Section 7.02	Bonds not to be Indebtedness of the Issuer	35
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	35
Section 7.04	Rates and Charges	35
Section 7.05	Sale of the System	36

Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	37
Section 7.07	Parity Bonds	38
Section 7.08	Books; Records and Audit	39
Section 7.09	Rates	41
Section 7.10	Operating Budget and Monthly Financial Report	42
Section 7.11	Engineering Services and Operating Personnel	42
Section 7.12	No Competing Franchise	43
Section 7.13	Enforcement of Collections	43
Section 7.14	No Free Services	43
Section 7.15	Insurance and Construction Bonds	43
Section 7.16	Mandatory Connections	44
Section 7.17	Completion of Design of Project; Permits and Orders	45
Section 7.18	Compliance with Loan Agreement and Law	45
Section 7.19	Tax Covenants	45
Section 7.20	Securities Laws Compliance	47
Section 7.21	Statutory Mortgage Lien	47
Section 7.22	Contracts; Public Releases	47

**ARTICLE VIII  
INVESTMENT OF FUNDS**

Section 8.01	Investment of Funds	48
Section 8.02	Non Arbitrage	48
Section 8.03	Small Issuer Exemption from Rebate	49

**ARTICLE IX  
DEFAULT AND REMEDIES**

Section 9.01	Events of Default	51
Section 9.02	Remedies	51
Section 9.03	Appointment of Receiver	52

**ARTICLE X  
PAYMENT OF BONDS**

Section 10.01	Payment of Bonds	54
---------------	------------------	----

**ARTICLE XI  
MISCELLANEOUS**

<b>Section 11.01</b>	<b>Amendment or Modification of Bond Legislation</b>	<b>55</b>
<b>Section 11.02</b>	<b>Bond Legislation Constitutes Contract</b>	<b>55</b>
<b>Section 11.03</b>	<b>Severability of Invalid Provisions</b>	<b>55</b>
<b>Section 11.04</b>	<b>Headings, Etc.</b>	<b>55</b>
<b>Section 11.05</b>	<b>Conflicting Provisions Repealed; Prior Ordinances</b>	<b>55</b>
<b>Section 11.06</b>	<b>Covenant of Due Procedure, Etc.</b>	<b>56</b>
<b>Section 11.07</b>	<b>Statutory Notice and Public Hearing</b>	<b>56</b>
<b>Section 11.08</b>	<b>Effective Date</b>	<b>57</b>
	<b>SIGNATURES</b>	<b>57</b>
	<b>CERTIFICATION</b>	<b>58</b>
	<b>EXHIBIT A</b>	<b>59</b>

THE CITY OF ST. MARYS

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ST. MARYS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 20 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

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

B. The Issuer presently owns and operates a public combined waterworks and sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be designed certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage system of the Issuer, consisting of the design of a wastewater treatment plant, certain extensions and upgrades to the collection system, and all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public combined waterworks and sewerage system of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System").

C. The Issuer intends to permanently finance the costs of design of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority) (the "Series 2003 A Bonds"), in the total aggregate principal amount of not more than \$500,000, initially to be represented by a single bond, to permanently finance the costs of design of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2003 A Bonds prior to and during design and for a period not exceeding 6 months after completion of design of the Project; amounts which may be deposited in the Series 2003 A 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; fees and expenses of the Authority; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2003 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the design 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 2003 A 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 System is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2003 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2003 A Bonds as to liens, pledge, source of and security for payment, being the (i) Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000 (the "Series 1996 B Bonds"); and (ii) Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000 (the "Series 1998 A Bonds").

The Series 1996 B Bonds and the Series 1998 A Bonds are hereinafter collectively called the "Prior Bonds". The ordinances which authorized the issuance of the Prior Bonds are herein collectively referred to as the "Prior Ordinances".

The Series 2003 A Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2003 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2003 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest on the Prior Bonds and the Series 2003 A Bonds and to make all payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the design of the Project, the operation of the System and the issuance of the Series 2003 A 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 and if required, the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia (the "PSC") by final order, the time for rehearing and appeal of which will either

have expired prior to the issuance of the Series 2003 A Bonds or such final order will not be subject to appeal.

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

**Section 1.03. Bond Legislation Constitutes Contract.** In consideration of the acceptance of Series 2003 A 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 2003 A 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, collectively, Chapter 8, Article 20 and Chapter 22C, Article 1 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 2003 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

“Authorized Officer” means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

“Board” means the Water and Sewer Board of the Issuer.

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

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

**"Bonds"** means, collectively, the Series 2003 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

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

**"Closing Date"** means the date upon which there is an exchange of the Series 2003 A Bonds for all or a portion of the proceeds of the Series 2003 A Bonds from the Authority.

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

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

**"Consulting Engineers"** means S&S Engineers, Inc., Charleston, West Virginia, 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; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

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

**"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 Council of the Issuer, as it may now or hereafter be constituted.

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

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenue” does not include any gains from the sale or other disposition of , or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous service.

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

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

“Investment Property” means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term “Investment Property” does not include any tax-exempt bond. With respect to an issue other than an issue a part of

which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means The City of St. Marys, a municipal corporation and political subdivision of the State of West Virginia, in Pleasants County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body and the Board of the Issuer.

"Loan Agreement" means the loan agreement heretofore entered, or to be entered, into by and between the Authority and the Issuer, providing for the purchase of the Series 2003 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2003 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2003 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2003 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (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, 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 other entity or authority designated as such for the Series 2003 A Bonds in the Supplemental Resolution with the written consent of the Authority.

**“Prior Bonds”** means, collectively, the Series 1996 B Bonds and the Series 1998 A Bonds.

**“Prior Ordinances”** means, collectively, the ordinance of the Issuer enacted October 15, 1996, the supplemental resolution of the Issuer adopted November 6, 1996, the ordinance of the Issuer enacted June 16, 1998, and the supplemental resolution of the Issuer adopted June 16, 1998, authorizing the issuance of the Prior Bonds.

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

**“Project”** means the Project as described in Section 1.02B hereof.

**“PSC”** means the Public Service Commission of West Virginia and any successor to the functions thereof.

**“Qualified Investments”** means and includes any of the following:

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

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

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

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

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the 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.

**“Recorder” means the Recorder of the Issuer.**

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

**“Registrar” means the Bond Registrar.**

**“Regulations” means temporary and permanent regulations promulgated under the Code, or any predecessor to the Code.**

**“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.**

**“Reserve Accounts” means, collectively, the respective Reserve Accounts created for the Prior Bonds and the Series 2003 A Bonds.**

**“Reserve Requirements” means, collectively, the respective amounts required to be on deposit in the Reserve Accounts.**

**“Revenue Fund” means the Revenue Fund created by the Prior Ordinances and continued hereby.**

**“Series 1996 B Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000.**

**“Series 1998 A Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000.**

**“Series 2003 A Bonds” means the Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), of the Issuer, authorized by this Bond Legislation.**

**“Series 2003 A Bonds Project Fund” means the Series 2003 A Bonds Project Fund created by Section 5.01 hereof.**

**“Series 2003 A Bonds Reserve Account” means the Series 2003 A Bonds Reserve Account created by Section 5.02 hereof.**

**“Series 2003 A Bonds Reserve Requirement”** means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2003 A Bonds in the then current or any succeeding year.

**“Series 2003 A Bonds Sinking Fund”** means the Series 2003 A Bonds Sinking Fund created by Section 5.02 hereof.

**“Sinking Funds”** means, collectively, the respective Sinking Funds created for the Prior Bonds and the Series 2003 A 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 2003 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2003 A Bonds, and not so included may be included in another Supplemental Resolution.

**“Surplus Revenues”** means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

**“System”** means the complete public combined waterworks and sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF DESIGN OF THE PROJECT

Section 2.01. Authorization of Design of the Project. There is hereby authorized and ordered the design of the Project, at an estimated cost of not to exceed \$500,000, which will be paid from proceeds of the Series 2003 A Bonds. The Issuer is hereby authorized and directed to approve the contract with the Consulting Engineer for the design of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority.

### ARTICLE III

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

**Section 3.01. Authorization of Bonds.** For the purposes of capitalizing interest on the Series 2003 A Bonds, funding the Series 2003 A Bonds Reserve Account, paying Costs of the Project not otherwise provided for, and paying certain costs of issuance of the Series 2003 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2003 A Bonds of the Issuer. The Series 2003 A Bonds shall be issued as a single bond, designated as "Combined Waterworks and Sewerage System Revenue Bond, Series 2003 A (West Virginia Water Development Authority)," in the principal amount of not more than \$500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2003 A Bonds remaining after funding of the Series 2003 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, on the Series 2003 A Bonds shall be deposited in or credited to the Series 2003 A Bonds Project Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

**Section 3.02. Terms of Bonds.** The Series 2003 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2003 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2003 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2003 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2003 A Bonds. The Series 2003 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable.

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

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall have such terms as set forth in a Supplemental Resolution.

**Section 3.03. Execution of Bonds.** The Series 2003 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2003 A Bonds shall cease to be such officer of the Issuer before the Series 2003 A 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 2003 A 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 2003 A 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 Series 2003 A 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 2003 A 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 2003 A 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 2003 A 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 2003 A 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 Series 2003 A Bonds or transferring the registered Series 2003 A Bonds are exercised, all Series 2003 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2003 A Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2003 A 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 Series 2003 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2003 A Bonds or, in the case of any proposed redemption of Series 2003 A Bonds, next preceding the date of the selection of Series 2003 A 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 2003 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the 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 2003 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning

of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the System as herein provided. No Registered Owner of the Series 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of the Series 2003 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2003 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

**Section 3.09. Delivery of Bonds.** The Issuer shall execute and deliver the Series 2003 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2003 A Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2003 A Bonds to the original purchasers.

**Section 3.10. Form of Bonds.** The text of the Series 2003 A 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 BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BOND, SERIES 2003 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

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

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

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on \_\_\_\_\_ 1, \_\_\_\_\_ 1, \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond shall accrue on the amount of each advance from the date shown on the Record of Advances attached hereto as EXHIBIT A and shall be payable quarterly on \_\_\_\_\_ 1, \_\_\_\_\_ 1, \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, initially at the rate of \_\_\_% per annum, and commencing \_\_\_\_\_, \_\_\_\_\_, at the rate of \_\_\_% per annum, as set forth on EXHIBIT B attached hereto.

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 are payable by check or draft of the Paying Agent mailed to the Registered Owner (as defined in the hereinafter described Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15<sup>th</sup> day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and the interest accrued to the prepayment date, so long as this Bond is prepaid on or before \_\_\_\_\_. Thereafter, this Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority dated \_\_\_\_\_, 200\_\_.

This Bond is issued (i) to pay the costs of design of certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public combined waterworks and sewerage system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; AND (2) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000 (COLLECTIVELY, THE PRIOR BONDS").**

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2003 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or

statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest thereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2003 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2003 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners 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 set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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 in the issuance of this Bond do exist, have happened, and have been performed in due time, form and

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

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 2003.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2003 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: \_\_\_\_\_, 2003.

\_\_\_\_\_, as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(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

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

**Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement.** The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and ratified and incorporated into this Bond Legislation. The Series 2003 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder 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. Filing of Amended Schedule.** Upon completion of the design of the Project, the Issuer will file with the Authority a schedule, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

**Section 5.01. Establishment of Funds and Accounts with Depository Bank.** The following special funds or accounts are hereby created with (or continued if previously created by the Prior Ordinances) 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 (created by the Prior Ordinances);
- (2) Renewal and Replacement Fund (created by the Prior Ordinances); and
- (3) Series 2003 A Bonds Project 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 2003 A Bonds Sinking Fund; and
- (2) Series 2003 A Bonds Reserve Account.

**Section 5.03. System Revenues; Flow of Funds.** A. The entire Gross Revenues derived from the operation of the System and all parts thereof 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 the Prior Ordinances and 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 the Prior Ordinances and 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 of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Sinking Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of interest on the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of interest on the Series 2003 A Bonds, for which interest has not been capitalized or as required in the

Loan Agreement, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2003 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 2003 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.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Sinking Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 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 2003 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments 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, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Reserve Accounts for the Prior Bonds, the amount required by the Prior Ordinances to be deposited therein; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, if not fully funded upon issuance of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2003 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 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 2003 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances 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, repairs, or 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 2003 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2003 A Bonds as the same shall become due. Moneys in the Series 2003 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2003 A Bonds as the same shall come due, when other moneys in the Series 2003 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2003 A Bonds Sinking Fund and Series 2003 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during design of the Project, be deposited in the Series 2003 A Bonds Project Fund, and following completion of design of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2003 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2003 A Bonds Reserve Account which result in a reduction in the balance therein to below the Series 2003 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2003 A 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 2003 A Bonds Sinking Fund or the Series 2003 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2003 A Bonds then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Prior Bonds and Series 2003 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account

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. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2003 A Bonds Outstanding under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in 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 the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

C. 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 interest, principal and reserve account payments 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.

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

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The 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.

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

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

## ARTICLE VI

### BOND PROCEEDS

**Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds.** From the moneys received from the sale of the Series 2003 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2003 A Bonds, there shall first be deposited with the Commission in the Series 2003 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2003 A Bonds, there shall be deposited with the Commission in the Series 2003 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2003 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2003 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2003 A Bonds Project Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so transferred or expended, are hereby pledged as additional security for the Series 2003 A Bonds.

D. After completion of design of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2003 A Bonds shall be expended as approved by the Authority.

**Section 6.02. Disbursements of Bond Proceeds.** The Issuer shall each month provide the Authority with a requisition for the costs incurred for design of the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2003 A Bonds Project Fund shall be made only after submission to, and approval from, the Authority 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.**

**Pending such application, moneys in the Series 2003 A Bonds Project Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.**

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

**Section 7.01. General Covenants of the Issuer.** All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Registered Owner of the Series 2003 A 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 2003 A 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 2003 A Bonds or the interest thereon is Outstanding and unpaid.

**Section 7.02. Bonds not to be Indebtedness of the Issuer.** The Series 2003 A 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 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest thereon.

**Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of the Series 2003 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2003 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

**Section 7.04. Rates and Charges.** The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on March 5, 2002, and the water rate ordinance of the Issuer enacted September 18, 2001, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2003 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2003 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2003 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2003 A Bonds, immediately be remitted to the Commission for deposit in the Series 2003 A Bonds Sinking Fund and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2003 A Bonds. Any balance remaining after the payment of the Series 2003 A Bonds and the interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, upon consultation with the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation

thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall, with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Funds and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price of such Bonds. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Registered Owners, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.** Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2003 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2003 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2003 A 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 2003 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2003 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2003 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority or without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2003 A Bonds.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115% of the maximum debt service in any succeeding year on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of

the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Registered Owners of the Series 2003 A Bonds and the Registered Owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinances. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from the Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2003 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2003 A Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinances with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinances, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinances and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

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 designing the

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

The Issuer shall permit the Authority, or its agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2003 A Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority, or any other original purchaser of the Series 2003 A Bonds, and shall mail in each year to any Registered Owner of the Series 2003 A Bonds requesting the same, an annual report containing the following:

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any

successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2003 A Bonds and shall submit said report to the Authority, or any other original purchaser of the Series 2003 A Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement, the Act and this Bond Legislation and that 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 design the Project. 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 its agents and representatives, to enter and inspect the System facilities at all reasonable times. Prior to, during and after completion of design 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. Rates.** Prior to the issuance of the Series 2003 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of the rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created (or, where appropriate, continued) hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit in the Reserve

Accounts and any reserve accounts for obligations on a parity with the Series 2003 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds, including the Prior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

**Section 7.10. Operating Budget and Monthly Financial Report.** The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate by a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority or to any Registered Owner of the Series 2003 A Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority and any Registered Owner of the Series 2003 A Bonds, or anyone acting for and on behalf of such Registered Owner.

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

**Section 7.11. Engineering Services and Operating Personnel.** The Issuer shall obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project will be designed as described in the application submitted to the Authority.

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

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2003 A Bonds remain Outstanding, the Issuer

will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

(3) **WORKER'S COMPENSATION COVERAGE** for all employees of or for the System eligible therefor.

(4) **FLOOD INSURANCE**, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) **FIDELITY BONDS** will be provided as to every officer, member and employee of the Issuer or the Board having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

**Section 7.16. Mandatory Connections.** The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System.

Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 7.17. Completion of Design of Project; Permits and Orders. The Issuer shall cause the Project to be designed as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

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

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement 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 design, acquisition and construction of the Project and the operation, maintenance and use of the System.

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 2003 A 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 2003 A Bonds during the term thereof is, under the terms of

the Series 2003 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 2003 A 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 2003 A Bonds during the term thereof is, under the terms of the Series 2003 A 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 2003 A 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 2003 A 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 2003 A 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 2003 A 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 2003 A 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 2003A 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. Statutory Mortgage Lien.** For the further protection of the Registered Owners of the Series 2003 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2003 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Registered Owners of the Prior Bonds.

**Section 7.22. Contracts: Public Releases.** A. The Issuer shall, simultaneously with the delivery of the Series 2003 A Bonds or immediately thereafter, enter into written contracts for the immediate design of the Project.

B. The Issuer shall submit all proposed change orders to the Authority for written approval. The Issuer shall obtain the written approval of the Authority before expending any proceeds of the Series 2003 A Bonds held in "contingency" as set forth in the schedule attached to the Certificate of the Consulting Engineer.

C. The Issuer shall list the funding as being provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication 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 Prior Ordinances, 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 2003 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2003 A Bonds from gross income for federal income tax purposes.

**Section 8.02. Non Arbitrage.** The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2003 A Bonds which would cause the Series 2003 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and Regulations, and (ii) it shall take all actions

that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2003 A Bonds) so that the interest on the Series 2003 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03 Small Issuer Exemption from Rebate.** In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2003 A Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2003 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt bonds (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2003 A Bonds are issued are not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 2003 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2003 A Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such rebate amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary to maintain the exclusion of interest on the Series 2003 A Bonds from gross income for federal income tax purposes. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent

attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

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

The Issuer shall submit to the Authority within 15 days following the end of each Bond year, a certified copy of its rebate calculation or, if the Issuer qualifies for the small issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge which would make the Series 2003 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2003 A Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 9.01. Events of Default.** Each of the following events shall constitute an "Event of Default" with respect to the Series 2003 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2003 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, covenants, agreements or conditions on its part relating to the Series 2003 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2003 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a 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; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

**Section 9.02. Remedies.** Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2003 A Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2003 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2003 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2003 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

**Section 9.03. Appointment of Receiver.** Any Registered Owner of a Series 2003 A Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Series 2003 A Bonds, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of such Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered

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

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Registered Owners of the Series 2003 A 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 2003 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2003 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2003 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2003 A 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 2003 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2003 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the 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 2003 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Series 2003 A Bonds from gross income of the Registered Owners thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2003 A 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 2003 A 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. Except for the 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, provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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 Mayor, the Recorder and members of the Governing Body and the Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

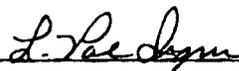
Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the St. Marys Oracle and the Pleasants County Leader, 2 qualified newspapers published and of general circulation in The City of St. Marys, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2003 A 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 A 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: September 16, 2003

Passed on Second Reading: October 7, 2003

Passed on Final Reading  
Following Public Hearing: October 21, 2003

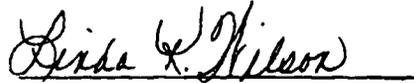
  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly passed by the Council of THE CITY OF ST. MARYS on October 7, 2003, and effective October 21, 2003.

Dated this 22<sup>nd</sup> day of October, 2003.

[SEAL]

  
Recorder

10/06/03  
100926/00304

EXHIBIT A

THE CITY OF ST. MARYS

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October 7, 2003, the Council of The City of St. Marys (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the design of certain additions, betterments and improvements (the "Project") to the sewerage portion of the Issuer's existing public combined waterworks and sewerage system (the "System") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than \$500,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority) (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 by and between the Issuer and the West Virginia Water Development Authority (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the continuation of a Revenue Fund and the disposition of the revenues of the System; provided for the payment of operating expenses; provided for the monthly payment of principal of and interest on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

5. Directed the creation of a Project Fund and the disbursement of Bond proceeds.

6. 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 System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the Registered Owners of the Bonds to the Net Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.
8. Provided for insurance coverage on the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Registered Owners of the Bonds.
9. Established the events of default and the remedies of the Registered Owners of the Bonds.
10. 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 Council of The City of St. Marys at a regular meeting on October 21, 2003, at 7:00 p.m., in the Council Chambers, City Hall, 418 Second Street, St. Marys, 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 Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

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Recorder

2.7

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2003 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of The City of St. Marys (the "Issuer") has duly and officially passed a Bond Ordinance on October 7, 2003, effective October 21, 2003 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS;

.....  
.....

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

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

WHEREAS, the Bond Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), of the Issuer, in an aggregate principal amount not to exceed \$500,000 (the "Bonds" or the "Series 2003 A Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 8, Article 20 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Bond 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 herein 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; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY  
OF THE CITY OF ST. MARYS, WEST VIRGINIA, AS FOLLOWS:**

**Section 1.** It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in the St. Marys Oracle and the Pleasants County Leader, 2 qualified newspapers published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and

the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, St. Marys, West Virginia, on October 21, 2003, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$425,000. The Bonds shall be dated the date of delivery and shall finally mature October 1, 2025. The interest on the Bonds shall accrue on the amount of each advance from the date shown on the Record of Advances attached to the Bonds as EXHIBIT A and shall be payable quarterly on January 1, April 1, July 1 and October 1 of each year, commencing January 1, 2004, initially at the rate of 3% per annum, and commencing January 1, 2006, at the rate of 5% per annum, as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The principal of the Bonds shall be payable quarterly on January 1, April 1, July 1 and October 1 of each year, commencing January 1, 2006, in the amounts as set forth in the Schedule Y attached to the Loan Agreement. The Bonds shall be subject to redemption upon the written consent of the Authority, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

**Section 4.** The Issuer hereby authorizes, ratifies, approves and accepts 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 Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the Application to the Authority. The 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 5.** The Issuer hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond 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 Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

**Section 6.** 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 Bond Ordinance.

**Section 7.** The Issuer hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, to serve as Depository Bank under the Bond Ordinance.

**Section 8.** Series 2003 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2003 A Bonds Sinking Fund as capitalized interest.

**Section 9.** Series 2003 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2003 A Bonds Reserve Account.

**Section 10.** The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2003 A Bonds Project Fund, as received from time to time for payment of costs of design of the Project, including costs of design of issuance of the Bonds.

**Section 11.** The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or

about October 22, 2003.

Section 12. The design 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 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the 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 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer hereby approves and accepts the contract relating to the design of the Project.

Section 15. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 21<sup>st</sup> day of October, 2003.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of St. Marys on the 21<sup>st</sup> day of October, 2003.

Dated this 22<sup>nd</sup> day of October, 2003.

[SEAL]

  
\_\_\_\_\_  
Recorder

10/08/03  
100926/00304

2.7

**THE CITY OF ST. MARYS**  
**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**  
**SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND)**

**BOND ORDINANCE**

**Table of Contents**

<b>Subject</b>	<b>Page</b>
<b>ARTICLE I</b>	
<b>STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS</b>	
Section 1.01	1
Section 1.02	2
Section 1.03	4
Section 1.04	4
<b>ARTICLE II</b>	
<b>AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT</b>	
Section 2.01	13
<b>ARTICLE III</b>	
<b>AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT</b>	
Section 3.01	14
Section 3.02	14
Section 3.03	15
Section 3.04	15
Section 3.05	15
Section 3.06	16
Section 3.07	17
Section 3.08	17
Section 3.09	17
Section 3.10	17

	<b>FORM OF BOND</b>	18
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	27
Section 3.12	Filing of Amended Schedule	27

**ARTICLE IV  
[RESERVED]** 28

**ARTICLE V  
FUNDS AND ACCOUNTS; SYSTEM REVENUES  
AND APPLICATION THEREOF**

Section 5.01	Establishment of Funds and Accounts with Depository Bank	29
Section 5.02	Establishment of Funds and Accounts with Commission	29
Section 5.03	System Revenues; Flow of Funds	29

**ARTICLE VI  
APPLICATION OF BOND PROCEEDS**

Section 6.01	Application of Bond Proceeds	34
Section 6.02	Disbursements From the Bond Construction Trust Fund	34

**ARTICLE VII  
ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01	General Covenants of the Issuer	36
Section 7.02	Bonds not to be Indebtedness of the Issuer	36
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	36
Section 7.04	Rates and Charges	36
Section 7.05	Sale of the System	37
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	38
Section 7.07	Parity Bonds	39
Section 7.08	Books; Records and Audit	41
Section 7.09	Rates	43
Section 7.10	Operating Budget and Monthly Financial Report	43
Section 7.11	Engineering Services and Operating Personnel	44

Section 7.12	No Competing Franchise	44
Section 7.13	Enforcement of Collections	45
Section 7.14	No Free Services	45
Section 7.15	Insurance and Construction Bonds	45
Section 7.16	Mandatory Connections	47
Section 7.17	Completion of Project; Permits and Orders	48
Section 7.18	Compliance with Loan Agreement and Law	48
Section 7.19	Tax Covenants	48
Section 7.20	Securities Laws Compliance	49
Section 7.21	Statutory Mortgage Lien	49
Section 7.22	Contracts; Public Releases	50

**ARTICLE VIII  
INVESTMENT OF FUNDS**

Section 8.01	Investment of Funds	51
Section 8.02	Non Arbitrage	51
Section 8.03	Small Issuer Exemption from Rebate	52

**ARTICLE IX  
DEFAULT AND REMEDIES**

Section 9.01	Events of Default	54
Section 9.02	Remedies	54
Section 9.03	Appointment of Receiver	54

**ARTICLE X  
PAYMENT OF BONDS**

Section 10.01	Payment of Bonds	57
---------------	------------------	----

**ARTICLE XI  
MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	58
Section 11.02	Bond Legislation Constitutes Contract	58
Section 11.03	Severability of Invalid Provisions	58
Section 11.04	Headings, Etc.	58
Section 11.05	Conflicting Provisions Repealed; Prior Ordinances	58

<b>Section 11.06</b>	<b>Covenant of Due Procedure, Etc.</b>	<b>59</b>
<b>Section 11.07</b>	<b>Statutory Notice and Public Hearing</b>	<b>59</b>
<b>Section 11.08</b>	<b>Effective Date</b>	<b>60</b>
	<b>SIGNATURES</b>	<b>60</b>
	<b>CERTIFICATION</b>	<b>61</b>
	<b>EXHIBIT A</b>	<b>62</b>

THE CITY OF ST. MARYS

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,700,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2006 A (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; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ST. MARYS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

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

B. The Issuer presently owns and operates a public combined waterworks and sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage system of the Issuer, consisting of connection to St. Marys Correctional Center, replacement of three pump stations, upgrade of two pump stations, and all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public combined waterworks and sewerage system of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Recorder of the Issuer.

C. The Issuer intends to permanently 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"), in connection with the West Virginia Infrastructure Fund administered by the Authority, pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund) (the "Series 2006 A Bonds"), in the total aggregate principal amount of not more than \$1,700,000, initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, on the Series 2006 A 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 2006 A 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; fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2006 A Bonds 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 2006 A 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 System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2006 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), in form satisfactory to the respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2006 A Bonds as to liens, pledge, source of and security for payment, being the (i) Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000 (the "Series 1996 B Bonds"); (ii) Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000 (the "Series 1998 A Bonds") and Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), dated October 22, 2003, issued in the original principal amount of \$425,000 (the "Series 2003 A Bonds"). The Series 1996 B Bonds, the Series 1998 A Bonds and the Series 2003 A Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2006 A Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2006 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds have been met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2006 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest on the Prior Bonds and the

Series 2006 A Bonds and to make all payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances.

I. 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 Project and the System and issuance of the Series 2006 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia (the "PSC") by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2006 A Bonds or such final order will not be subject to appeal.

J. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 2006 A 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 2006 A 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, collectively, Chapter 8, Article 20 and Chapter 31, Article 15A 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 2006 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

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

**"Board"** means the Water and Sewer Board of the Issuer.

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

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

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

**"Bonds"** means, collectively, the Series 2006 A Bonds, the Prior 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 date upon which there is an exchange of the Series 2006 A Bonds for all or a portion of the proceeds of the Series 2006 A Bonds from the Authority.

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

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

**"Consulting Engineers"** means S&S Engineers, Inc., Charleston, West Virginia, 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 1.02E 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.

**"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 City Council of the Issuer, as it may now or hereafter be constituted.

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

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

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

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

**"Investment Property"** means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

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

"Issuer" means The City of St. Marys, a municipal corporation and political subdivision of the State of West Virginia, in Pleasants County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body and the Board of the Issuer.

"Loan Agreement" means the loan agreement heretofore entered, or to be entered, into by and between the Authority and the Issuer, on behalf of the Council, providing for the purchase of the Series 2006 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2006 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2006 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2006 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other

than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (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 other entity designated as such for the Series 2006 A Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the Series 1996 B Bonds, the Series 1998 A Bonds and the Series 2003 A Bonds.

"Prior Ordinances" means, collectively, the ordinance of the Issuer enacted October 15, 1996, the supplemental resolution of the Issuer adopted November 6, 1996, the ordinance of the Issuer enacted June 16, 1998, and the supplemental resolution of the Issuer adopted June 16, 1998, authorizing the issuance of the Prior Bonds.

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

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

**“PSC” means the Public Service Commission of West Virginia and any successor to the functions thereof.**

**“PSC Order” means, collectively, the final order or orders of the PSC, granting the Issuer a certificate of convenience and necessity to acquire and construct the Project and approving the financing for the Project.**

**“Qualified Investments” means and includes any of the following:**

**(a) Government Obligations;**

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

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

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

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

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

**(g) Repurchase agreements, fully secured by investments of the types**

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 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.

"Recorder" means the Recorder of the Issuer.

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

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

"Reserve Accounts" means, collectively, the respective Reserve Accounts created for the Prior Bonds and the Series 2006 A Bonds.

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

"Revenue Fund" means the Revenue Fund created by the Prior Ordinances and continued hereby.

**"Series 1996 B Bonds"** means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, dated November 13, 1996, issued in the original principal amount of \$128,000.

**"Series 1998 A Bonds"** means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, dated June 18, 1998, issued in the original principal amount of \$554,000.

**"Series 2003 A Bonds"** means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), dated October 22, 2003, issued in the original principal amount of \$425,000.

**"Series 2006 A Bonds"** means the Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Bond Legislation.

**"Series 2006 A Bonds Construction Trust Fund"** means the Series 2006 A Bonds Construction Trust Fund created by Section 5.01 hereof.

**"Series 2006 A Bonds Reserve Account"** means the Series 2006 A Bonds Reserve Account created by Section 5.02 hereof.

**"Series 2006 A Bonds Reserve Requirement"** means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2006 A Bonds in the then current or any succeeding year.

**"Series 2006 A Bonds Sinking Fund"** means the Series 2006 A Bonds Sinking Fund created by Section 5.02 hereof.

**"Sinking Funds"** means, collectively, the respective Sinking Funds created for the Prior Bonds and the Series 2006 A 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 2006 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2006 A Bonds, and not so included may be included in another Supplemental Resolution.

**“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.**

**“System” means the complete public combined waterworks and sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.**

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

**“West Virginia Infrastructure Fund” means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.**

**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 \$1,700,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2006 A Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Council and the Authority.

### ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2006 A Bonds, funding the Series 2006 A Bonds Reserve Account, paying Costs of the Project not otherwise provided for, and paying certain costs of issuance of the Series 2006 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2006 A Bonds of the Issuer. The Series 2006 A Bonds shall be issued as a single bond, designated as "Combined Waterworks and Sewerage System Revenue Bond, Series 2006 A (West Virginia Infrastructure Fund)," in the principal amount of not more than \$1,700,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2006 A Bonds on the Series 2006 A Bonds shall be deposited in or credited to the Series 2006 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2006 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2006 A 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 Series 2006 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2006 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2006 A Bonds. The Series 2006 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall have such terms as set forth in a Supplemental Resolution.

**Section 3.03. Execution of Bonds.** The Series 2006 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2006 A Bonds shall cease to be such officer of the Issuer before the Series 2006 A 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 2006 A 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 2006 A 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 Series 2006 A 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 2006 A 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 2006 A 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 2006 A 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 2006 A 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 Series 2006 A Bonds or transferring the registered Series 2006 A Bonds is exercised, all Series 2006 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2006 A Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2006 A 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 Series 2006 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2006 A Bonds or, in the case of any proposed redemption of Series 2006 A Bonds, next preceding the date of the selection of Series 2006 A 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 2006 A 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 2006 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the System as herein provided. No Registered Owner of the Series 2006 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2006 A Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of the Series 2006 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2006 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

**Section 3.09. Delivery of Bonds.** The Issuer shall execute and deliver the Series 2006 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2006 A Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate, register and deliver the Series 2006 A Bonds to the original purchasers.

**Section 3.10. Form of Bonds.** The text of the Series 2006 A 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 BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND,  
SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND)

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

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

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_\_ day of \_\_\_\_\_, 200\_, THE CITY OF ST. MARYS, a municipal corporation and political subdivision of the State of West Virginia in Pleasants County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, at the rate per annum as set forth on EXHIBIT B attached hereto.

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 are payable by check or draft of the Paying Agent mailed to the Registered Owner (as defined in the hereinafter described Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15<sup>th</sup> day of the month next preceding a 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 West Virginia Infrastructure and Jobs Development Council (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 Council, dated \_\_\_\_\_, 200\_\_.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public combined waterworks and sewerage system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (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 (1) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED NOVEMBER 13, 1996, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$128,000; (2) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, DATED JUNE 18, 1998, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$554,000; AND (3) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 22, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$425,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2006 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be

issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2006 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2006 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners 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 set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the costs of the Project and 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 a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, THE CITY OF ST. MARYS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated as of the date first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2006 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: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_, as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(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**

**DEBT SERVICE SCHEDULE**

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_, the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer and 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 Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and ratified and incorporated into this Bond Legislation. The Series 2006 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder 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. Filing of Amended Schedule.** Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the Council a schedule, the form of which will be provided by the Council, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

#### Section 5.01. Establishment of Funds and Accounts with Depository Bank.

The following special funds or accounts are hereby created with (or continued if previously created by the Prior Ordinances) 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 (created by the Prior Ordinances);
- (2) Renewal and Replacement Fund (created by the Prior Ordinances); and
- (3) Series 2006 A 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 2006 A Bonds Sinking Fund; and
- (2) Series 2006 A Bonds Reserve Account.

#### Section 5.03. System Revenues; Flow of Funds. A. The entire Gross

Revenues derived from the operation of the System and all parts thereof 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 the Prior Ordinances and 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 the Prior Ordinances and 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 of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Sinking Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of interest on the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment

of interest on the Series 2006 A Bonds, for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2006 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2006 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 2006 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.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Sinking Funds for the Prior Bonds, the amount required by the Prior Ordinances for payment of principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2006 A Bonds, for deposit in the Series 2006 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2006 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 2006 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments 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, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Reserve Accounts for the Prior Bonds, the amount required by the Prior Ordinances to be deposited therein; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2006 A Bonds, if not fully funded upon issuance of the Series 2006 A Bonds, for deposit in the Series 2006 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2006 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2006 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 2006 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances 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, 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 2006 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2006 A Bonds as the same shall become due. Moneys in the Series 2006 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2006 A Bonds, as the same shall come due, when other moneys in the Series 2006 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2006 A Bonds Sinking Fund and Series 2006 A 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 2006 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due, if any, on the Series 2006 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2006 A Bonds Reserve Account which result in a reduction in the balance therein to below the Series 2006 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2006 A 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 2006 A Bonds Sinking Fund or the Series 2006 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2006 A Bonds then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Prior Bonds and Series 2006 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account 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. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2006 A Bonds Outstanding under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in 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 the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

C. 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 interest, principal and reserve account payments 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.

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

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the respective parties

shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The 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.

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

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

## ARTICLE VI

### APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds. From the moneys received from the sale of the Series 2006 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2006 A Bonds, there shall first be deposited with the Commission in the Series 2006 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2006 A Bonds, there shall be deposited with the Commission in the Series 2006 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2006 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2006 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2006 A Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so transferred or expended, are hereby pledged as additional security for the Series 2006 A Bonds.

D. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2006 A Bonds shall be expended as approved by the Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2006 A Bonds Construction Trust Fund shall be made only after submission to, and approval from 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.

Pending such application, moneys in the Series 2006 A 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 2006 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 2006 A 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 2006 A 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 2006 A Bonds or the interest thereon is Outstanding and unpaid.

**Section 7.02. Bonds not to be Indebtedness of the Issuer.** The Series 2006 A 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 2006 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2006 A Bonds or the interest thereon.

**Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of the Series 2006 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2006 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

**Section 7.04. Rates and Charges.** The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on January 6, 2004, and the water rate ordinance of the Issuer enacted January 6, 1998, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2006 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2006 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2006 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2006 A Bonds, immediately be remitted to the Commission for deposit in the Series 2006 A Bonds Sinking Fund and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2006 A Bonds. Any balance remaining after the payment of the Series 2006 A Bonds and the interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000,

the Issuer shall first, determine, upon consultation with the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall, with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Funds and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price of such Bonds. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Registered Owners of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.** Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2006 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2006 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2006 A 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 2006 A Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the

Series 2006 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2006 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the Council and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2006 A Bonds.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115% of the maximum debt service in any succeeding year on the following:

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Registered Owners of the Series 2006 A Bonds and the Registered Owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinances. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from the Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2006 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2006 A Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinances with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinances, shall have been made in full

as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinances and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

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

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2006 A Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority and the Council, or any other original purchaser of the Series 2006 A Bonds, and shall mail in each year to any Registered Owner of the Series 2006 A Bonds requesting the same, an annual report containing the following:

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2006 A Bonds and shall submit said report to the Authority and the Council, or any other original purchaser of the Series 2006 A Bonds. Such audit report submitted to the Authority and the Council 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 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 the Council, 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 and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the Act.

**Section 7.09. Rates.** Prior to the issuance of the Series 2006 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of the rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2006 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2006 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2006 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2006 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2006 A Bonds, including the Prior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

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

expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the Council and to any Registered Owner of the Series 2006 A Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Council, the Authority and any Registered Owner of the Series 2006 A Bonds, or anyone acting for and on behalf of such Registered Owner.

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

**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 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.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the Council 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 Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

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

**Section 7.12. No Competing Franchise.** To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

**Section 7.13. Enforcement of Collections.** The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

**Section 7.14. No Free Services.** The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 7.15. Insurance and Construction Bonds.** A. The Issuer hereby covenants and agrees that so long as the Series 2006 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

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

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Board having custody of the revenues or of any other funds of

the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

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

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

**Section 7.16. Mandatory Connections.** The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

**Section 7.17. Completion of Project; Permits and Orders.** The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

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

**Section 7.18. Compliance with Loan Agreement and Law.** The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, the Council or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

**Section 7.19. 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 2006 A 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 2006 A Bonds during the term thereof is, under the terms of the Series 2006 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 2006 A 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 2006 A Bonds during the term thereof is, under the terms of the Series 2006 A 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 2006 A 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 2006 A 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 2006 A 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 2006 A 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 2006 A 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 2006 A 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. Statutory Mortgage Lien.** For the further protection of the Registered Owners of the Series 2006 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series

2006 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Registered Owners of the Prior Bonds.

Section 7.22. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2006 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council for written approval. The Issuer shall obtain the written approval of the Council before expending any proceeds of the Series 2006 A Bonds held in "contingency" as set forth in the schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council before expending any proceeds of the Series 2006 A Bonds made available due to bid or construction or project underruns.

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

## ARTICLE VIII

### INVESTMENT OF FUNDS

**Section 8.01. 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 Prior Ordinances, 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 2006 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest, if any, on the Series 2006 A Bonds from gross income for federal income tax purposes.

**Section 8.02. Non Arbitrage.** The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2006 A Bonds which would cause the Series 2006 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and Regulations, and (ii) it shall take all

actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2006 A Bonds) so that the interest on the Series 2006 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03 Small Issuer Exemption from Rebate.** In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2006 A Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2006 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt bonds (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2006 A Bonds are issued are not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 2006 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2006 A Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such rebate amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary to maintain the exclusion of interest on the Series 2006 A Bonds from gross income for federal income tax purposes. In order to provide

for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

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

The Issuer shall submit to the Authority within 15 days following the end of each Bond year, a certified copy of its rebate calculation or, if the Issuer qualifies for the small issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge which would make the Series 2006 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2006 A Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 9.01. Events of Default.** Each of the following events shall constitute an "Event of Default" with respect to the Series 2006 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2006 A 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 2006 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2006 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or 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; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

**Section 9.02. Remedies.** Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2006 A 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 System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2006 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

**Section 9.03. Appointment of Receiver.** Any Registered Owner of the Series 2006 A 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 and

after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Series 2006 A Bonds, any Registered Owner shall in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project

and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### 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 2006 A 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 2006 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2006 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Amendment or Modification of Bond Legislation.** Prior to issuance of the Series 2006 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2006 A 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 2006 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2006 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2006 A 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 2006 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Series 2006 A Bonds from gross income of the Registered Owners thereof.

**Section 11.02. Bond Legislation Constitutes Contract.** The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2006 A 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 2006 A 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.** Except for the 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, provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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 Mayor, the Recorder and members of the Governing Body and the Board 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 A 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 St. Marys Oracle and the Pleasants County Leader, 2 qualified newspapers published and of general circulation in The City of St. Marys, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2006 A 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 A 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: June 6, 2006

Passed on Second Reading: June 21, 2006

Passed on Final Reading  
Following Public Hearing: July 5, 2006

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly passed by the Council of THE CITY OF ST. MARYS on July 5, 2006, and effective July 5, 2006.

Dated this 10th day of July, 2006.

[SEAL]

  
Recorder

EXHIBIT A

THE CITY OF ST. MARYS

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on \_\_\_\_\_, 2006, the Council of The City of St. Marys (the "Issuer"), adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the sewerage portion of the Issuer's existing public combined waterworks and sewerage system (the "System") and the financing of the cost, not otherwise provided, thereof through the issuance of not more than \$ \_\_\_\_\_ in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund) (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 a sinking fund, a reserve account and a renewal and replacement fund 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 System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to the Net Revenues of the System; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the registered owners of the Bonds.

6. 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 Council of The City of St. Marys at a \_\_\_\_\_ meeting on \_\_\_\_\_, 2006, at \_\_\_\_\_ p.m., in the Council Chambers, City Hall, St. Marys, 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 Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

\_\_\_\_\_  
Recorder

THE CITY OF ST. MARYS 2.8(A)  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF ST. MARYS COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA INFRASTRUCTURE FUND); AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of The City of St. Marys (the "Issuer") has duly and officially passed a Bond Ordinance on July 5, 2006, effective July 5, 2006 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF ST. MARYS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,700 000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2006 A (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; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund), of the Issuer, in an aggregate principal amount not to exceed \$1,700,000 (the "Bonds" or the "Series 2006 A Bonds"), and has authorized the execution and delivery of a loan agreement relating to the 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 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Bond 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 herein 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; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ST. MARYS, WEST VIRGINIA, AS FOLLOWS:

(C1100842.1)

**Section 1.** It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in the St. Marys Oracle and the Pleasants County Leader, 2 qualified newspapers published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, St. Marys, West Virginia, on July 5, 2006, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

**Section 2.** Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$1,581,250. The Bonds shall be dated the date of delivery, shall finally mature June 1, 2036, shall bear interest at the rate of .5% per annum. The principal of and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2007, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The 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 Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer hereby authorizes, ratifies, approves and accepts 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 Mayor and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the 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 5. The Issuer hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond 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 Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 6. 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 Bond Ordinance.

Section 7. The Issuer hereby appoints and designates The First National Bank of St. Marys, St. Marys, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 2006 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2006 A Bonds Sinking Fund as capitalized interest.

Section 9. Series 2006 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2006 A Bonds Reserve Account.

**Section 10.** The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2006 A Bonds Construction Trust Fund, as received from time to time for payment of costs of the Project, including costs of issuance of the Bonds.

**Section 11.** The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about July 10, 2006.

**Section 12.** 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 13.** The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the 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 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

**Section 14.** The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

**Section 15.** The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

**Section 16.** This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 5<sup>th</sup> day of July, 2006.

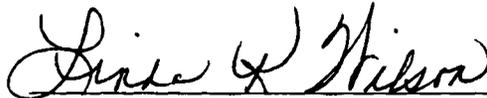
  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of THE CITY OF ST. MARYS on the 5<sup>th</sup> day of July, 2006.

Dated this 10<sup>th</sup> day of July, 2006.

[SEAL]

  
Recorder



WEST VIRGINIA  
**Water Development Authority**  
*Celebrating 34 Years of Service 1974 - 2008*

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of Smith, Cochran & Hicks, PLLC, independent certified public accountants and Jackson Kelly PLLC, bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), in the original aggregate principal amount of \$4,315,000 and the Water Revenue Bonds, Series 2008 B (United States Department of Agriculture), in the original aggregate principal amount of \$1,034,000 (collectively the "Series 2008 Bonds") by The City of St. Marys (the "Issuer"), under the terms of the resolutions authorizing the Series 2008 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), and Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund) (collectively, the "Prior Bonds").

WITNESS my signature on this 5<sup>th</sup> day of November, 2008.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
\_\_\_\_\_  
Authorized Representative

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

GENERAL CERTIFICATE ON:

1. TERMS AND AWARD OF BONDS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. SPECIMEN BOND
13. BOND PROCEEDS
14. USERS
15. CONFLICT OF INTEREST
16. PROCUREMENT OF ENGINEERING SERVICES
17. WETLANDS COVENANT
18. COUNTERPARTS

On this 5<sup>th</sup> day of November, 2008, we, the undersigned MAYOR and the undersigned RECORDER of The City of St. Marys (the “Issuer”), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A and Series 2008 B (United States Department of Agriculture) (collectively, the “Bonds” or individually, the “Series 2008 A Bonds” and the “Series 2008 B Bonds”), dated the date hereof, as follows:

1. TERMS AND AWARD OF BONDS: The entire issue of the Bonds has been duly awarded to the United States of America, United States Department of Agriculture, Rural Utilities Service (the “Government”), pursuant to a letter of conditions dated July 31, 2006, an amended letter of conditions dated March 18, 2008 (collectively, the “Letter of Conditions”), a Bond Ordinance duly enacted by the Issuer on October 21, 2008, and a

{C1256030.1}

Supplemental Resolution duly adopted by the Issuer on October 21, 2008 (collectively, the “Ordinance”). All capitalized words and terms used in this Certificate and not otherwise defined herein shall have the same meaning as set forth in the Ordinance.

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues 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 of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, licenses, orders, permits, exemptions, consents, authorizations, registrations and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for 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 acceptance and approval of the Letter of Conditions by the Issuer. The Issuer has met all conditions set forth in the Letter of Conditions and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds shall be issued on a parity with each other and with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects.

The Issuer has met the parity and coverage requirements of the Prior Bonds and the Prior Resolutions and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature.

The Issuer has obtained (1) the certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Prior Bonds have been met; and (2) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Bonds on

a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. **SIGNATURES AND DELIVERY:** The undersigned Mayor and Recorder 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 Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond for each series, dated the date hereof, by his or her manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature; and the Mayor did deliver the Bonds to a representative of the Government as the original purchaser of the Bonds.

6. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the Recommended Decision of the Administrative Law Judge on August 20, 2008, as made final by the PSC on August 30, 2008, in Case No. 08-0635-WS-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the August 30, 2008 Order has expired prior to the date hereof without any appeal having been filed. The Issuer hereby certifies that it will not appeal such Order. Such Orders remain in full force and effect.

7. **RATES:** The rates of the System, as adopted by Ordinance entered on March 18, 2008, will become effective when the Project is substantially complete.

8. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "The City of St. Marys." The Issuer is a municipal corporation presently existing under the laws of, and a political subdivision of, the State of West Virginia in Pleasants County of said State. The governing body of the Issuer is its City Council, consisting of the Mayor and 6 council members duly elected, appointed, qualified and acting members, whose names and dates of termination of their current terms are as follows:

<u>Name</u>	<u>Date Of Termination Of Office</u>
Paul Ingram, Mayor	July 1, 2009
Linda K. Wilson, City Recorder	undetermined
Rick McCullough, Council Member	July 1, 2009
Holly S. West, Council Member	July 26, 2009
Charlie Knight, Council Member	July 1, 2009

C. A. Hendricks, Council Member	July 1, 2011
J. B. Phillips, Council Member	July 1, 2011
Bill Israel, Council Member	July 1, 2011

The duly appointed and acting attorney for the Issuer is Keith White, Esq., St. Marys, West Virginia. The duly appointed and acting PSC counsel for the Issuer is Jackson Kelly PLLC, Charleston, West Virginia.

9. **LAND AND RIGHTS-OF-WAY:** All land, rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Issuer, and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions 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.

10. **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, the acquisition, construction, and financing of the Project or the operation of the System 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.

11. **INSURANCE:** The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Letter of Conditions. All insurance for the System required by the Ordinance and the Letter of Conditions are in full force and effect.

12. **SPECIMEN BOND:** Attached hereto as Exhibit A are specimens of the Bonds which, except as to execution, are identical in all respects with the Bonds this day delivered to the Government and being substantially in the form prescribed in the Ordinance.

13. **BOND PROCEEDS:** On the date hereof, the Issuer received from the Government (i) the sum of \$626,000, being a portion of the principal amount of the Series

{C1256030.1}

2008 A Bonds; and (ii) the sum of \$52,000 being a portion of the principal amount of the Series 2008 B Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

14. **USERS:** The Issuer will serve at least 1,113 bona fide water users and 933 bona fide sewer users upon the completion of the Project, in full compliance with the Letter of Conditions.

15. **CONFLICT 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.

16. **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.

17. **WETLANDS COVENANT:** The Issuer hereby certifies that it will not use any proceeds of the Bonds for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity.

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 The City of St. Marys as of the date first written above.

[CORPORATE SEAL]

<u>Signature</u>	<u>Official Title</u>
	Mayor
	Recorder
	Attorney

EXHIBIT A

Specimen Bonds (see Tab No. 14)

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF RECORDER  
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

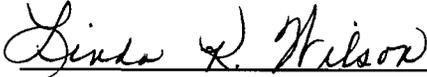
On this 5<sup>th</sup> day of November, 2008, the undersigned duly appointed Recorder of The City of St. Marys (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of The City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A and Series 2008 B (United States Department of Agriculture), 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 enacted, adopted or approved by the City Council (the "Council") 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. Charter.
2. Oaths of Office of the Mayor, Recorder and Council Members.
3. Rules of Procedure.
4. Public Service Commission Order.
5. USDA Letter of Conditions, Closing Letter and Loan Resolution.
6. Minutes of Board Meeting regarding Adoption of USDA Loan Resolution.
7. Bond Ordinance.
8. Supplemental Resolution.

9. Minutes of Board Meeting regarding Enactment of Bond Ordinance and Supplemental Resolution.
10. Affidavits of Publication regarding Public Hearing and Bond Ordinance.
11. WDA Consent to Issuance of Bonds.
12. Environmental Health Services Permit.
13. Evidence of Insurance.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

THE CITY OF ST. MARYS

  
\_\_\_\_\_  
Recorder

[SEAL]

**THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)**

**CERTIFICATE OF CONSULTING ENGINEER**

On this 5<sup>th</sup> day of November, 2008, , I, Ashok M. Sanghavi, Registered Professional Engineer, West Virginia License No. 6177, of S&S Engineers, Inc., Consulting Engineers, Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain improvements and extensions (the "Project") to the existing combined public water and sewer facilities (the "System") of The City of St. Marys (the "Issuer"), to be constructed primarily in Pleasants County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (collectively, 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 enacted by the Issuer on October 21, 2008 (as supplemented, the "Ordinance"), the Letter of Conditions dated July 31, 2006, and the amended Letter of Conditions dated March 18, 2008 (collectively, the "Letter of Conditions"), from the United States of America, United States Department of Agriculture, Rural Utilities Service ("the Government").

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 costs of issuance and related costs.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the West Virginia Bureau for Public Health (the "BPH"), and any change orders approved by the Issuer, the Government and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and will have a 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 Letter of

Conditions, and in reliance upon the opinion of the Issuer=s counsel, Keith White, Esq., dated the date hereof, all successful bidders have made required provisions for all insurance and payment and performance bonds and 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 Government and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of the Issuer=s certified public accountants, Smith, Cochran & Hicks, PLLC, dated the date hereof, as of the effective date thereof, the rates and charges for the System as approved by the Public Service Commission of West Virginia and adopted by the Issuer will be sufficient to comply with the provisions of the Ordinance; and (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Government.

WITNESS my signature and seal as of the date first written above.

[SEAL]



S&S ENGINEERS, INC.

A handwritten signature in cursive script, appearing to read "Ashok M. Sanghavi", written over a horizontal line.

Ashok M. Sanghavi, P.E.  
West Virginia License No. 6177



**Smith, Cochran & Hicks, P.L.L.C.**

**Certified Public Accountants**

Oak Hill Bridgeport Charleston Montgomery

405 Capitol Street • Suite 908 • Charleston, West Virginia 25301 • 304-345-1151 • Fax 304-346-6731

November 5, 2008

**THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)**

The City of St. Marys  
St. Marys, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

United States Department of Agriculture  
Rural Utilities Service  
Parkersburg, West Virginia

Ladies and Gentlemen:

We have reviewed the water and sewer rates of The City of St. Marys (the "Issuer"), as adopted on March 18, 2008, the projected operating expenses and the anticipated customer usage provided by S&S Engineers, Inc., the consulting engineer of the Issuer. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the water and sewer facilities of the Issuer (the "System"), and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of principal of and interest on the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 B, Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A, Combined Waterworks and Sewerage System Revenue Bonds, Series 2003 A (West Virginia Water Development Authority), and Combined Waterworks and Sewerage System Revenue Bonds, Series 2006 A (West Virginia Infrastructure Fund) (collectively, the "Prior Bonds"), and the proposed Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), and Combined Waterworks and Sewerage

The City of St. Marys  
West Virginia Water Development Authority  
United States Department of Agriculture  
November 5, 2008  
Page 2

System Revenue Bonds, Series 2008 B (United States Department of Agriculture)  
(collectively, the "Series 2008 Bonds").

It is further our opinion that (i) the Net Revenues for the fiscal year following the year in which the Series 2008 Bonds are to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2008 Bonds; and (ii) the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2008 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2008 Bonds, will not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the Prior Bonds and the Series 2008 Bonds.

Very truly yours,



Smith, Cochran & Hicks, PLLC

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF NO LITIGATION

On this 5<sup>th</sup> day of November, 2008, the undersigned hereby certifies that as of the date hereof, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale or delivery of the above-captioned Bonds (collectively, the "Bonds"), the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, pledge of Net Revenues, or in any way contesting or affecting the validity of the Bonds or any proceedings of The City of St. Marys (the "Issuer") taken with respect to the authorization, issuance, sale or delivery of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of the Net Revenues for payment of the Bonds.

All capitalized terms used herein shall have the same meaning set forth in the Bond Ordinance, authorizing the Bonds, duly enacted by the Issuer on October 21, 2008.

WITNESS my signature as of the date first written above.

  
\_\_\_\_\_  
Keith White, Esq.  
Counsel for The City of St. Marys

THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

RECEIPT FOR BONDS

On this 5<sup>th</sup> day of November, 2008, the undersigned authorized representative of the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), for and on behalf of the Government, hereby certifies as follows:

1. On the date hereof, the undersigned received for and on behalf of the Government, the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture) (the "Series 2008 A Bonds"), of The City of St. Marys (the "Issuer"), dated November 5, 2008, issued in the form of one bond in the principal amount of \$4,315,000, and numbered AR-1. The Series 2008 A Bonds bear interest at the rate of 4.5% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of such Bonds and continuing on the corresponding day of each month for the first 24 months after the date of such Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on such Bonds in the aggregate amount of \$19,806, except that the final installment on such Bonds shall be paid at the end of 40 years from the date of such Bonds in the sum of the unpaid principal and interest due on the date thereof.

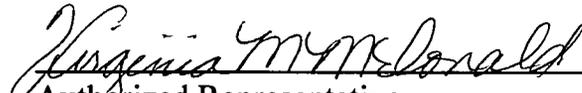
2. On the date hereof, the undersigned received for and on behalf of the Government, the Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture) (the "Series 2008 B Bonds"), of The City of St. Marys (the "Issuer"), dated November 5, 2008, issued in the form of one bond in the principal amount of \$1,034,000, and numbered BR-1. The Series 2008 B Bonds bear interest at the rate of 4.375% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of such Bonds and continuing on the corresponding day of each month for the first 24 months after the date of such Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on such Bonds in the aggregate amount of \$4,664, except that the final installment on such Bonds shall be paid at the end of 40 years from the date of such Bonds in the sum of the unpaid principal and interest due on the date thereof.

3. At the time of such receipt of the Series 2008 A Bonds and the Series 2008 B Bonds, they had been executed by the Mayor of the Issuer and attested by the

Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon such Bonds.

WITNESS my signature as of the date first written above.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE, RURAL UTILITIES SERVICE

  
\_\_\_\_\_  
Authorized Representative

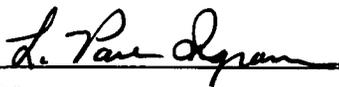
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

RECEIPT FOR BOND PROCEEDS

On this 5<sup>th</sup> day of November, 2008, the undersigned Mayor of The City of St. Marys (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), (i) the sum of \$626,000, being the first advance on the principal of the \$4,315,000 The City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), dated November 5, 2008; and (ii) the sum of \$52,000 being the first advance on the principal of the \$1,034,000 The City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture), dated November 5, 2008 (collectively, the "Bonds"). The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer by the Government from time to time as construction progresses.

WITNESS my signature as of the date first written above.

THE CITY OF ST. MARYS



\_\_\_\_\_  
Mayor

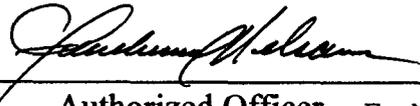
THE CITY OF ST. MARYS  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2008 A AND SERIES 2008 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

On this 5<sup>th</sup> day of November, 2008, PLEASANTS COUNTY BANK, St. Marys, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance and a Supplemental Resolution enacted by The City of St. Marys (the "Issuer") on October 21, 2008 (collectively, the "Ordinance"), authorizing the issuance of the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A and Series 2008 B (United States Department of Agriculture), in the respective aggregate principal amounts of \$4,315,000 and \$1,034,000, dated November 5, 2008, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

WITNESS my signature as of the date first written above.

PLEASANTS COUNTY BANK



Authorized Officer F. Michael Nelson  
President/CEO

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

3.9(A)

Suite 500

8 Capitol Street, Charleston, WV 25301

(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: November 5, 2008

ISSUE: The City of St. Marys Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A  
(United States Department of Agriculture)

ADDRESS: 418 Second Street, St. Marys, WV 26170 COUNTY: Pleasants

PURPOSE OF ISSUE: New Money  Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: November 5, 2008 CLOSING DATE: November 5, 2008

ISSUE AMOUNT: \$4,315,000 RATE: 4.5%

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

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: None (District pays USDA directly)

BOND COUNSEL: Jackson Kelly PLLC  
Contact Person: Samme L. Gee, Esquire  
Phone: (304) 340-1318

UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

CLOSING BANK: Pleasants County Bank  
Contact Person: Mike Nelson  
Phone: (304) 684-2227

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Linda Wilson  
Position: Recorder  
Phone: (304) 684-2401

OTHER: USDA, Rural Utilities Service  
Contact Person: Virginia McDonald  
Function: Rural Development Specialist  
Phone: (304) 420-6666

E-Mail: LKWILSON STMARYSWV@suddenlink.net

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 Bond Commission will only hold the Series 2008 A Bonds Reserve Account to be funded over 10 years. Debt service payments will be made by the City directly to the National Finance Office.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_



# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL and WASHINGTON STREETS

1 DAVIS SQUARE, SUITE 200  
TELEPHONE 304-558-2981

CHARLESTON, WEST VIRGINIA 25301

### PERMIT

PROJECT: (Sewer and Water)  
Sewer and Water Line Replacements  
and Two New Water Storage Tanks

PERMIT NO.: 17,650

LOCATION: St. Marys

COUNTY: Pleasants

DATE: 8-22-2007

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

City of St. Marys  
418 Second Street  
St. Marys, West Virginia 26170

is hereby granted approval to: install approximately 800 LF of 12", 2,250 LF of 10", 6,400 LF of 8", and 1,100 LF of 6" sewer line; and necessary manholes and cleanouts. Also, to install approximately 4,750 LF of 8" and 8,750 LF of 6" water line; replace the existing St. Mary's Refinery 490,000 gallon underground storage tank with a new 490,000 gallon above ground storage tank; add a new 260,000 gallon tank next to the existing Harmony Acres 260,000 gallon storage tank; and all necessary valves and appurtenances.

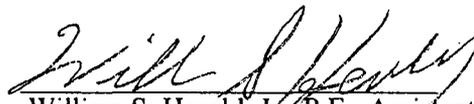
Sewage lines are being installed to replace existing deteriorating sewer lines on the eastern side of US Route 2 in St. Marys. Water lines are being installed to replace existing deteriorated and undersized water lines on the eastern side of US Route 2 in St. Marys. The 260,000 gallon tank is being added due to the increased demand by the Route 16 Water Association and the anticipated future demands from the Pleasants County Public Service District.

**Note: This permit is contingent upon: 1) All new water line and the new water storage tanks being disinfected, flushed and bacteriologically tested, prior to use; 2) Maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines with the water line over the sewer line; and 3) Enclosing the 260,000 gallon and 490,000 gallon water storage tanks with a minimum six (6) feet high fence with a locking gate.**

The Office of Environmental Health Services OEHS Wheeling District Office, telephone (304) 238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR



William S. Herold, Jr., P.E., Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:emt

pc: S & S Engineers, Inc.  
Katheryn Emery, P.E., DEP  
James W. Ellars, P.E., PSC-Engineering Division  
Amy Swann, PSC  
Pleasants County Health Department  
OEHS-EED Wheeling District Office



## **IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**CLOSING MEMORANDUM**

**To:** Linda Wilson  
Virginia McDonald  
Samme Gee

**From:** Ryan White

**Date:** November 5, 2008

**Re:** The City of St. Marys Combined Waterworks and Sewerage System  
Revenue Bonds, Series 2008 A (United States Department of  
Agriculture) and Series 2008 B (United States Department of  
Agriculture)

**1. DISBURSEMENTS TO DISTRICT**

- A. Payor: United States Department of Agriculture  
Source: Series 2008 A Bonds Proceeds  
Amount: \$626,000  
Date: November 5, 2008  
Form: Electronic Funds Transfer  
Payee: The City of St. Marys  
Bank: Pleasants County Bank  
Routing No.: 051501765  
Account No.: 01-1658-0  
Account: Series 2008 Bonds Construction Trust Fund
- B. Payor: United States Department of Agriculture  
Source: Series 2008 B Bonds Proceeds  
Amount: \$52,000  
Date: November 5, 2008  
Form: Electronic Funds Transfer  
Payee: The City of St. Marys  
Bank: Pleasants County Bank  
Routing No.: 051501765  
Account No.: 01-1658-0  
Account: Series 2008 Bonds Construction Trust Fund



November 5, 2008

The City of St. Marys  
St. Marys, West Virginia

United States Department of Agriculture,  
Rural Utilities Service  
Parkersburg, West Virginia

Re: The City of St. Marys Combined Waterworks and Sewerage System  
Revenue Bonds, Series 2008 A  
(United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to The City of St. Marys (the “Issuer”) in connection with the issuance of its Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 A (United States Department of Agriculture), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$4,315,000, in the form of one bond and bear interest from the date hereof, on the amount advanced thereunder, at the rate of 4.5% per annum.

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 18, Article 20 of the Code of West Virginia, 1931, as amended (the “Act”), and have been authorized by a Bond Ordinance duly enacted by the Issuer on October 21, 2008, as supplemented by a Supplemental Ordinance duly adopted by the Issuer on October 21, 2008 (collectively, the “Ordinance”). The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the “Project”); and (ii) paying certain costs of

{C1256095.1}

issuance and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance 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 public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Ordinance and all other necessary 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.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds and the Series 2008 B Bonds, all in accordance with the terms of the Bonds and the Ordinance.

4. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

The City of St. Marys  
United States Department of Agriculture  
November 5, 2008  
Page 3

affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

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

Very truly yours,

*Jack Kelly PLLC*



November 5, 2008

The City of St. Marys  
St. Marys, West Virginia

United States Department of Agriculture,  
Rural Utilities Service  
Parkersburg, West Virginia

Re: The City of St. Marys Combined Waterworks and Sewerage System  
Revenue Bonds, Series 2008 B  
(United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to The City of St. Marys (the “Issuer”) in connection with the issuance of its Combined Waterworks and Sewerage System Revenue Bonds, Series 2008 B (United States Department of Agriculture), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$1,034,000, in the form of one bond and bear interest from the date hereof, on the amount advanced thereunder, at the rate of 4.375% per annum.

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 18, Article 20 of the Code of West Virginia, 1931, as amended (the “Act”), and have been authorized by a Bond Ordinance duly enacted by the Issuer on October 21, 2008, as supplemented by a Supplemental Ordinance duly adopted by the Issuer on October 21, 2008 (collectively, the “Ordinance”). The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the “Project”); and (ii) paying certain costs of

{C1348829.1}

issuance and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance 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 public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Ordinance and all other necessary 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.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds and the Series 2008 A Bonds, all in accordance with the terms of the Bonds and the Ordinance.

4. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

The City of St. Marys  
United States Department of Agriculture  
November 5, 2008  
Page 3

affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed Bond numbered BR-1 and in our opinion, the form of said Bond and its execution are regular and proper.

Very truly yours,

A handwritten signature in black ink that reads "Jack Kelly DLCC". The signature is written in a cursive style with a horizontal line above the first few letters.

BRYANT & WHITE  
Attorneys at Law  
110 Washington Street  
P. O. Box 176  
St. Marys, WV 26170

CARL P. BRYANT  
KEITH WHITE  
304-684-9428

bryantandwhite@suddenlinkmail.com

TELEPHONE: 304-684-2219  
FAX:

November 5, 2008

The City of St. Marys  
St. Marys, West Virginia

United States Department of Agriculture  
Rural Utilities Service  
Parkersburg, West Virginia

Jackson Kelly PLLC  
Charleston, West Virginia

Re: The City of St. Marys Combined Waterworks and Sewerage System  
Revenue Bonds, Series 2008 A and Series 2008 B  
(United States Department of Agriculture)

Ladies and Gentlemen:

I am counsel to The City of St. Marys (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (collectively, the "Bonds"), the letter of conditions dated July 31, 2006, and the amended letter of conditions dated March 18, 2008, from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), a Bond Ordinance duly enacted by the City Council of the Issuer (the "Council") on October 21, 2008, as supplemented by a Supplemental Resolution duly adopted on October 21, 2008 (collectively, the "Ordinance"), 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 Ordinance when used herein.

The City of St. Marys  
United States Department of Agriculture  
Jackson Kelly PLLC  
November 5, 2008  
Page 2

I am of the opinion that:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to adopt the Ordinance, all under the Act and other applicable provisions of law.

2. The Mayor, Recorder and members of Council have been duly and properly elected and appointed, have taken the requisite oaths and are thereby authorized to act on behalf of the Issuer in their respective capacities.

3. The Ordinance has been duly adopted by the Board and is in full force and effect.

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Ordinance and the Bonds 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.

5. The Issuer has received all permits, licenses, approvals, consents, certificates, orders, exemptions, 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 operation of the System and the imposition of rates and charges for use of the System, including, without limitation, all requisite permits, approvals, orders and certificates from the West Virginia Bureau for Public Health and the West Virginia Infrastructure and Jobs Development Council. The Issuer has taken all actions required for the imposition of such rates and charges, including, without limitation, the enactment of an Ordinance prescribing such rates and charges.

6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or

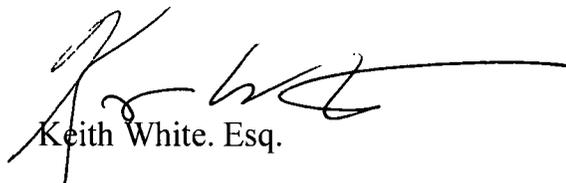
The City of St. Marys  
United States Department of Agriculture  
Jackson Kelly PLLC  
November 5, 2008  
Page 3

body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds and the Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for payment of the Bonds.

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

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

Very truly yours,



Keith White. Esq.

**OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAY**

Date 11/5/08

Dear Sir:

I have reviewed the action taken by the City of St. Marys, West Virginia  
(hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way Certificate," executed by the Corporation on N/A, 19 \_\_\_\_\_. I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate."

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.
- C. Exceptions:  
None

Very truly yours,

Attorney for City of St. Marys, West Virginia

*Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, S.W., Washington, D.C. 20250-7602. Please DO NOT RETURN this form to this address. Forward to the local USDA office only. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.*

**Form RD 1927-10**  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION See Exhibit A	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid State \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

# LEGEND

- ⊙ PROPERTY CORNER (5) LOT NUMBER
- POB POINT OF BEGINNING [85'] RECORD DISTANCE
- RBCS 5/8" REBAR W/CAP SET #123 UTILITY POLE
- IPF IRON PIPE FOUND ⚡ LIGHT POLE
- RBCF REBAR W/CAP FOUND ⬡ TAX MAP
- ⬡ TAX MAP TAX PARCEL

# UTILITY NOTE

1. UTILITY FEATURES SHOWN HAVE BEEN LOCATED BY FIELD SURVEYS. OVERHEAD AND UNDERGROUND LINES MAY DEFLECT BETWEEN SURFACE FEATURES. THE SURVEYOR MAKES NO GUARANTEE THAT THE UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. PRIOR TO ANY EXCAVATION IT IS THE RESPONSIBILITY OF THE OWNER AND/OR CONTRACTOR

NORTH REFERENCE TO GPS. READING OF JUNE 2007.

## POB

NEW REFINERY WATER TANK  
12,049 SQ. FT.  
OR 0.2766 ACRE  
5/8" REBAR WITH CAP SET  
AT ALL CORNERS UNLESS  
OTHERWISE NOTED

ST. MARYS REFINING CO.  
DEED BOOK 222 PAGE 534  
50 ACRES ASSESSED

PROPOSED 25 FT. WIDE  
RIGHT OF WAY EASEMENT  
ON REFINERY PROPERTY

EXISTING CITY OF ST.  
MARYS WATER RESERVOIR  
NO DEED REFERENCE

## LINE TABLE

LINE	BEARING	DISTANCE
L1	N 60°22'47" E	255.43'
L2	N 38°59'42" W	88.51'
L3	N 43°01'56" E	32.21'
L4	N 34°34'55" E	99.14'
L5	N 75°58'11" E	79.85'
L6	N 56°09'25" W	130.14'

## CURVE TABLE

CURVE	RADIUS	ARC	CHORD L	CHORD BEARING
C1	841.34'	156.98'	156.75'	N 51°23'37" E
C2	404.91'	98.53'	98.29'	N 53°01'10" E
C3	189.75'	92.91'	91.98'	N 46°21'10" E
C4	294.08'	124.45'	123.53'	N 20°12'07" E
C5	82.79'	43.42'	42.93'	N 05°13'06" W
C6	375.04'	105.06'	104.72'	N 28°20'43" W
C7	109.56'	57.20'	56.55'	N 24°02'15" W
C8	41.66'	40.55'	38.97'	N 18°48'27" E
C9	398.33'	103.18'	102.89'	N 50°27'10" E
C10	2344.74'	121.72'	121.71'	N 56°23'10" E
C11	440.65'	83.82'	83.70'	N 49°26'58" E
C12	1710.17'	87.52'	87.51'	N 45°27'57" E
C13	423.04'	64.70'	64.63'	N 42°33'04" E
C14	307.82'	146.43'	145.06'	N 48°12'36" E
C15	96.08'	56.92'	56.10'	N 59°08'23" E
C16	25.41'	27.19'	25.91'	N 11°39'07" E
C17	76.66'	31.39'	31.17'	N 30°44'09" W
C18	191.39'	44.74'	44.64'	N 49°09'47" W

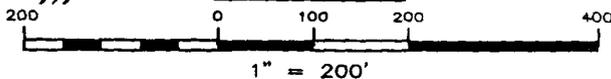
## POB

RIGHT OF WAY EASEMENT  
AT INTERSECTION CENTER  
OF EXISTING ROAD AT  
PROPERTY LINE

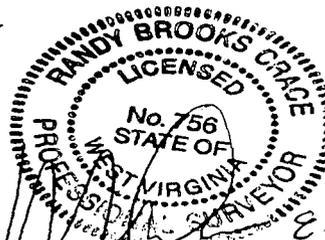
EXISTING RIGHT OF WAY EASEMENT  
TO REFINERY PROPERTY. SEE  
RECORD PLAT BOOK 3 PAGE 116.

WV SECONDARY ROUTE 2/3  
SHADOW HILL ROAD

GRAPHIC SCALE:



RANDY BROOKS CRACE, P.S.  
WV REG. NO. 756



## PLAT SHOWING THE NEW REFINERY WATER TANK LOT TO BE ACQUIRED BY THE CITY OF ST. MARYS

SITUATED ON THE WATERS OF TANNERY RUN OF THE OHIO RIVER  
WASHINGTON DISTRICT, PLEASANTS COUNTY, WEST VIRGINIA

## PREPARED FOR THE CITY OF ST. MARYS

SCALE: 1" = 200'	<p>S &amp; S ENGINEERS, INC.</p>	PROJECT: ST. MARYS WATER
DATE: AUGUST 10, 2007		DRAWING: REFINERY-PLAT
DRAWN BY: RBC		APPROVED BY: RBC
CHECKED BY: BJC		SHEET OF 1 OF 1
<b>FLOOD ZONE</b> INSPECTION SUBJECT IS NOT IN A FLOOD HAZARD AREA	501 EAGLE MOUNTAIN ROAD CHARLESTON, WV 25311	PHONE (304) 342-7168 FAX (304) 342-7169
		<b>FLOOD MAP</b> PANEL 540073C0030B EFFECTIVE DATE JUNE 3, 1991

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION See Exhibit A	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

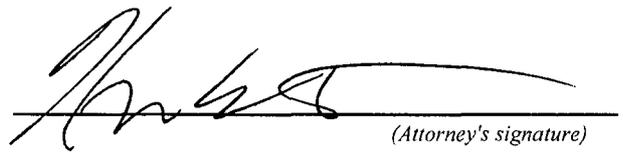
- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
*(Date)* *p.m.*
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as (Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory (Priority) (Mortgage, etc.) lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_, *(Date)* \_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_ p.m. *(Book, page, and office)*
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

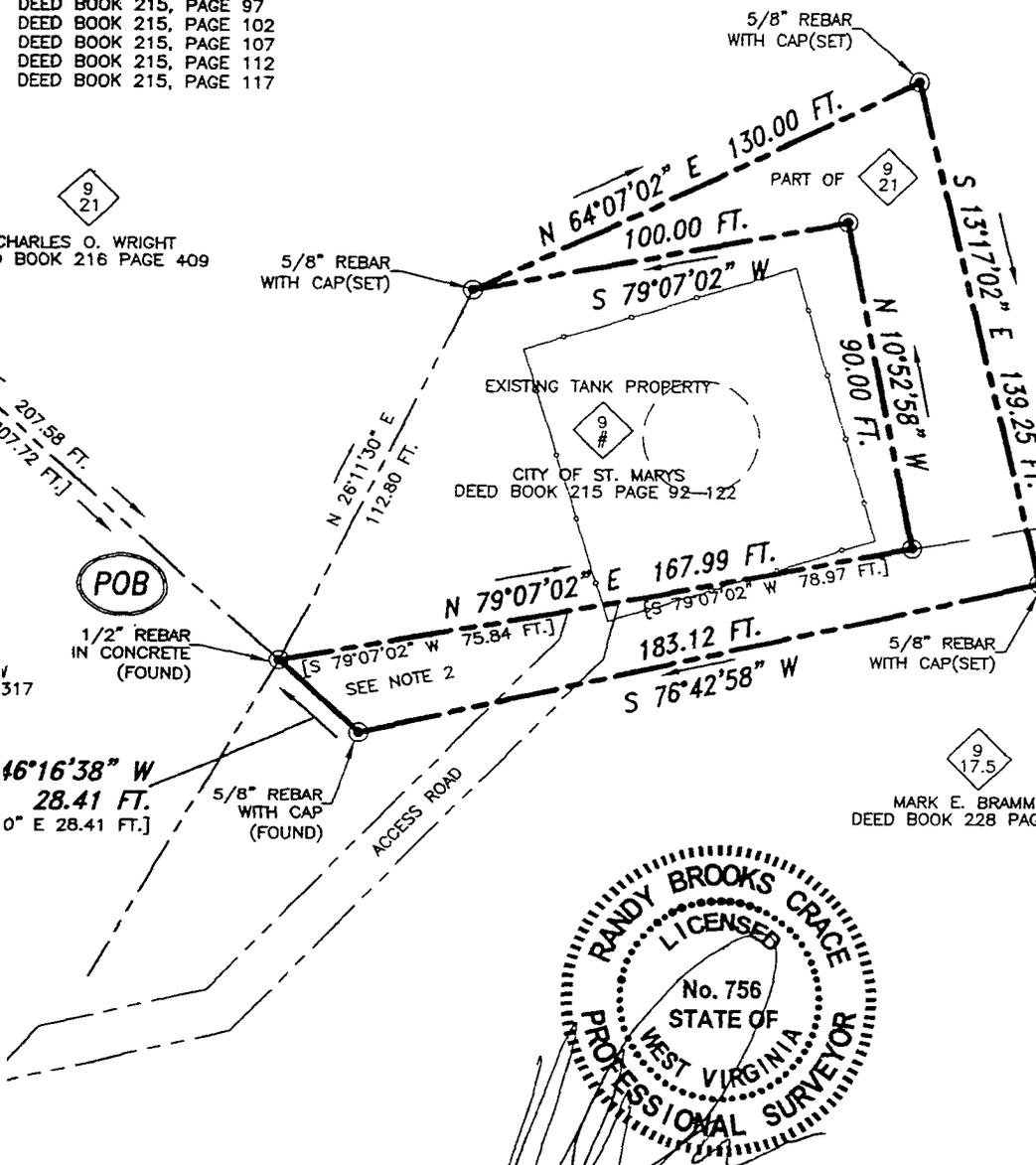
Attachments

# SOURCE OF TITLE

EXISTING HARMONY ACRES TANK SITE  
OBTAINED BY THE CITY OF ST. MARYS  
UNDER DEEDS OF RECORD IN  
DEED BOOK 215, PAGE 92  
DEED BOOK 215, PAGE 97  
DEED BOOK 215, PAGE 102  
DEED BOOK 215, PAGE 107  
DEED BOOK 215, PAGE 112  
DEED BOOK 215, PAGE 117

9  
21

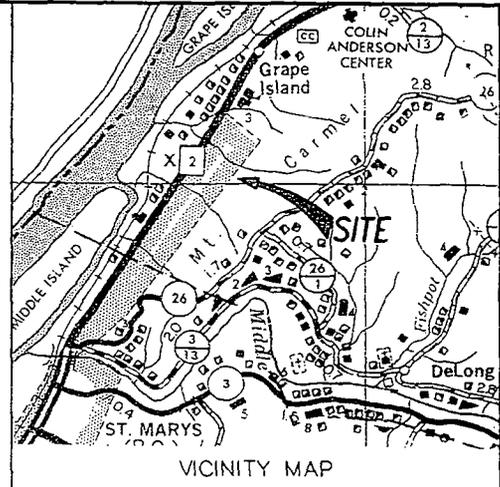
CHARLES O. WRIGHT  
DEED BOOK 216 PAGE 409



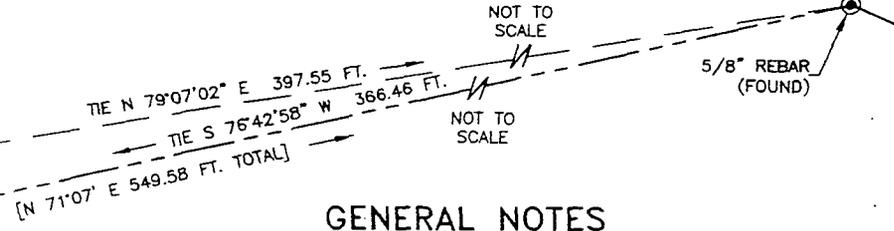
9  
21  
CHARLES O. WRIGHT  
DEED BOOK 216 PAGE 409

9  
17.5  
MARK E. BRAMMER  
DEED BOOK 228 PAGE 287

NORTH REFERENCED TO  
CITY OF ST. MARYS DEED



POB  
1/2" REBAR  
IN CONCRETE  
(FOUND)



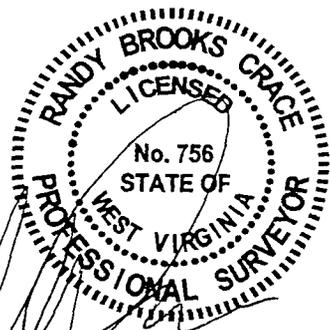
## GENERAL NOTES

1. UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.
2. THE PROPERTY ACQUIRED BY THE CITY OF ST. MARYS IN 1989 FOR THE ORIGINAL WATER TANK PROPERTY DOES NOT ADJOIN THE BRAMMER PROPERTY AS SHOWN ON THE RECORDED SURVEY PLAT PREPARED FOR THE CITY OF ST. MARYS BY JOHN S. BAILEY, LICENSED LAND SURVEYOR.

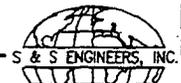
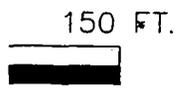
MAP SHOWING  
**ADDITIONAL PROPERTY TO BE ACQUIRED BY  
THE CITY OF ST. MARYS**  
FOR THE  
**NEW HARMONY ACRES WATER TANK**

SITUATED ON THE WATERS OF THE OHIO RIVER, IN UNION DISTRICT  
NEAR THE CITY OF ST. MARYS, PLEASANTS COUNTY, WEST VIRGINIA  
SCALE: 1"=50' DATE: APRIL 27, 2007

PREPARED BY  
S & S ENGINEERS, INC.  
501 EAGLE MOUNTAIN ROAD  
CHARLESTON, WV 25311



**RANDY BROOKS CRACE, P.S.**  
WV PROFESSIONAL SURVEYOR NO. 756



Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Gallaher Street Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 ~~a.m.~~ p.m. (including the time of filing the current security instrument).  
(Date)
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



---

*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

---

*(Address, include ZIP Code)*

Attachments

## EXHIBIT A

This lift station is located in an alley owned by the City of St. Marys and as a result no right of way was needed.

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Harmony Acres Water Tower St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid State Priority Mortgage lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_ p.m.  
(Date) (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Water Well No. 5 St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
\_\_\_\_\_
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid State Agency \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Oak Terrace Water Reservoir St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

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- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Harmony Acres Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

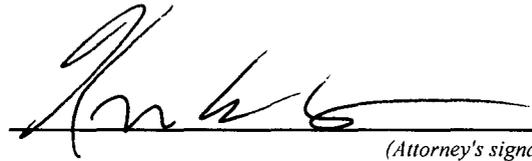
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(Date) (p.m.)
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as (Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory (Priority) (Mortgage, etc.) lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_, (Date), at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_ p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

## FINAL TITLE OPINION

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Donald Street Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
\_\_\_\_\_
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):



## EXHIBIT A

This lift station is located on a right of way owned by the State of West Virginia Division of Highways by which the City of St. Marys was given permission to place a lift station. No formal right of way was granted for recording.

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION St. Marys Marina Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
\_\_\_\_\_
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid statutory \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Mt. Carmel Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid State Party \_\_\_\_\_ lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date)  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

## EXHIBIT A

This lift station is located on a right of way owned by the State of West Virginia Division of Highways by which the City of St. Marys was given permission to place a lift station. No formal right of way was granted for recording.

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION St. Marys Correctional Center Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

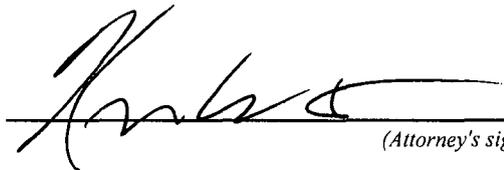
- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
*(Date)* *p.m.*
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
\_\_\_\_\_
- as \_\_\_\_\_  
*(Joint tenants, tenants by the entirety, etc.)*
- B. The United States of America holds a valid State \_\_\_\_\_ lien on said property as required by Rural  
*(Priority)* *(Mortgage, etc.)*  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
*(Date)*  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. *(Book, page, and office)*
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION St. Marys Waste Water Plant & Lift Station St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
*(Date)* *p.m.*
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
  
as \_\_\_\_\_  
*(Joint tenants, tenants by the entirety, etc.)*
- B. The United States of America holds a valid 1st Mortgage \_\_\_\_\_ lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_ p.m.  
*(Priority)* *(Mortgage, etc.)* *(Date)* *(Book, page, and office)*
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments

Form RD 1927-10  
(Rev. 7-98)

**FINAL TITLE OPINION**

LOAN APPLICANT City of St. Marys	ADDRESS OR PROPERTY COVERED BY THIS OPINION Water Well No. 6 St. Marys, WV 26170	
APPLICANT FOR TITLE EXAMINATION City of St. Marys	COUNTY Pleasants	STATE West Virginia

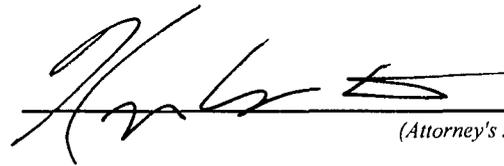
- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to November 5, 2008, at 11:59 a.m. (including the time of filing the current security instrument).  
*(Date)* *p.m.*
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in the City of St. Marys  
\_\_\_\_\_
- as \_\_\_\_\_  
*(Joint tenants, tenants by the entirety, etc.)*
- B. The United States of America holds a valid Statutory \_\_\_\_\_ lien on said property as required by Rural  
*(Priority)* *(Mortgage, etc.)*  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
*(Date)*  
\_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
\_\_\_\_\_, at \_\_\_\_\_ p.m. *(Book, page, and office)*
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

11-05-2008

*(Date)*



*(Attorney's signature)*

PO Box 176  
St. Marys, WV 26170

*(Address, include ZIP Code)*

Attachments



November 5, 2008

The City of St. Marys  
St. Marys, West Virginia

United States Department of Agriculture  
Rural Utilities Service  
Parkersburg, West Virginia

Re: The City of St. Marys Combined Waterworks and Sewerage System  
Revenue Bonds, Series 2008 A and Series 2008 B  
(United States Department of Agriculture)

Ladies and Gentlemen:

We are special counsel to The City of St. Marys (the “Issuer”) in connection with certain matters before the Public Service Commission of West Virginia (the “PSC”). As such counsel, we are of the opinion that the Issuer has received the Recommend Decision of the Administrative Law Judge entered on August 20, 2008, as made final by the PSC order on August 30, 2008, in Case No. 08-635-WS-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the August 30, 2008 Order has expired prior to the date hereof without any appeal having been filed. Such Order is in full force and effect.

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

Very truly yours,

A handwritten signature in cursive script that reads 'Jackson Kelly PLLC'.

JACKSON KELLY PLLC