

**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND
SERIES 2002**

INDEX OF CLOSING DOCUMENTS

1. Certified copy of Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended.
2. Certified copy of the Certificate of Incorporation of the Town of Tunnelton, West Virginia (the "Town").
3. Certified copy of the Administrative Ordinances of the Town.
4. Certified copy of the Oaths of Office of the Mayor, Recorder, Treasurer and Council members of the Town.
5. Certified copy of Ordinance enacted by the Council of the Town on May 21, 2001, establishing sewer rates (the "Rate Ordinance") and Affidavit of Publication of notice of public hearing on the Rate Ordinance.
6. Certified copy of Ordinance creating the Sanitary Board of the Town.
7. Petition of the Sanitary Board.
8. Certified copies of Minutes of meetings of the Town Council on March 18, 2002, March 27, 2002, and April 17, 2002, regarding enactment of Bond Ordinance, and copy of Resolution adopted on May 6, 2002, ratifying actions taken at said meetings.
9. Certified copy of Bond Ordinance passed by the Council of the Town on March 28, 2002, and placed into effect on April 17, 2002, authorizing the Town's Sewerage System Revenue Bond, Series 2002 (the "Bond Ordinance").
10. Affidavit of publication of the abstract of Bond Ordinance and notice of public hearing on Bond Ordinance in the Preston County Journal.
11. [Credit Agreement-Not required for this transaction.]
12. NPDES Permit.
13. United States Department of Housing and Urban Development Small Cities Block Grant Award.
14. Engineer's Certificate.

15. Recommended Decision of the Public Service Commission of West Virginia dated September 25, 2001, which became a Final Order of the Commission on October 15, 2001, granting the Certificate of Convenience and Necessity to the Town for the Sewerage System.
16. General Certificate, dated April 19, 2002, signed by the Mayor, Town Recorder, and Counsel, including:
 - A. Award of Bond
 - B. No Litigation
 - C. Governmental Approvals
 - D. No Adverse Financial Change; Indebtedness
 - E. Signatures, Etc.
 - F. Certification of Copies of Documents
 - G. Incumbency and Official Name
 - H. Delivery and Payment
 - I. Land and Rights of Way
 - J. Meetings, Etc.
 - K. Contractors' Insurance, Etc.
 - L. Connections, Etc.
 - M. Rates
 - N. Publication and Public Hearing on Bond Ordinance
17. Opinion of Bowles Rice McDavid Graff & Love, PLLC, Bond Counsel.
18. Opinion of Richard K. Wehner, Esq., Counsel to the Issuer
19. Receipt for Bond No. R-1 and Transcript dated April 19, 2002, signed by Rural Utilities Service.
20. Receipt for \$177,235 of the Bond Proceeds, dated April 19, 2002, signed by the Mayor.
21. Specimen Bond.



State of West Virginia



Certificate

*I, Joe Manchin, III, Secretary of State of the
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13 OF THE WEST VIRGINIA
CODE, AND CHAPTER 16, ARTICLE 13 OF THE 2001 CUMULATIVE
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*

April 19, 2002

Joe Manchin
By: *John B. L.* Secretary of State
Administrative Assistant

sanitary district, said county court shall enter an appropriate order as hereinbefore provided, and such additional territory shall thenceforth be deemed an integral part of such sanitary district. (1933, Ex. Sess., c. 24, § 13.)

Editor's notes. — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

§ 16-12-14. Disconnection of territory from sanitary district.

Any contiguous territory located within the boundaries of any sanitary district organized under this article, and upon the border of such sanitary district, may become disconnected from such sanitary district in the manner following, to wit: Ten percent or more of the legal voters resident in the territory sought to be disconnected from such sanitary district may petition the county court [county commission] of the county in which the original petition for the organization of said sanitary district was filed, to cause the question of such disconnection to be submitted to the legal voters of such territory whether such territory shall be disconnected. Said petition shall be addressed to the county court of the county in which the original petition for the formation of such sanitary district was filed and shall contain a definite description of the boundaries of such territory to be disconnected and recite as a fact, that there is no bonded indebtedness of such sanitary district incurred while such territory to be disconnected was a part of such sanitary district and that such territory will not be, either benefited or served by any work or improvement either then existing or then authorized by said sanitary district. Upon filing such petition in the office of the county clerk of the county in which the original petition for the formation of such sanitary district has been filed it shall be the duty of the county court of the county in which the original petition for the formation of such sanitary district was filed, to consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one [§ 16-12-1] of this article. If any part of the territory proposed to be disconnected is situated in another county or counties other than that county in which the original petition was filed, then it shall be the duty of the said county court of the county in which the original petition was filed to call to its assistance the county courts of counties in which portions of such territory proposed to be disconnected is situated; such county courts shall constitute themselves a board of commissioners, and after electing a presiding officer from among themselves, shall consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory to be disconnected, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one of this article. Provided, however, That it shall be the duty of the county

court or the board of commissioners to deny the prayer of the petition for the disconnecting of any territory from the original sanitary district, if the material allegations therein contained are not founded in fact.

Notice shall be given by the county court of the time and place, when and where all persons interested will be heard substantially as provided in section one [§ 16-12-1] of this article. The conduct of the hearing and the manner of conducting the subsequent election on the question whether such territory shall become disconnected and the issuance, reception, return and canvassing of the ballots shall be, as nearly as possible, in accordance with the provisions of section one of this article. The ballots for the election provided for in this section shall be substantially as follows, to wit:

- For disconnection from sanitary district.
- Against disconnection from sanitary district.

If a majority of the votes cast at such election shall be in favor of disconnection, and if the trustees of such sanitary district shall, by ordinance, disconnect such territory, thereupon the county court of the county in which the original petition for the formation of such sanitary district was filed, shall enter an appropriate order in the records of the said county court and thereafter such territory shall henceforth be deemed disconnected from such sanitary district. (1933, Ex. Sess., c. 24, § 14.)

Editor's notes. — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

Sec. 16-13-1.	Acquisition, operation, etc., of works: acquisition of property; issuance of bonds.	Sec. 16-13-10.	Interest on and redemption of bonds: form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.
16-13-2.	Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.	16-13-11.	Additional bonds to extend or improve works; of works to have equal priority with original bonds.
16-13-3.	Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.	16-13-12.	Additional bonds for extension, etc., of works to have equal priority with original bonds.
16-13-4.	Payment of preliminary expenses of surveys, etc.	16-13-13.	Application of revenue from bonds; lien.
16-13-5.	Ordinance necessary before acquisition or construction of works.	16-13-14.	Securing bonds by trust indenture.
16-13-6.	Publication and hearing upon ordinance.	16-13-15.	Sinking fund; transfer of balance of net revenues.
16-13-7.	Acquisition by condemnation or purchase.	16-13-16.	Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.
16-13-8.	Cost of works.	16-13-17.	Municipality subject to established rates.
16-13-9.	Contracts and obligations incurred to be paid for solely by revenue bonds.	16-13-18.	Supervision of works by sanitary

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- board; organization of board; qualifications, terms and compensation of members.
- 16-13-18a. Publication of financial statement.
- 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
- 16-13-20. Discharge of lien on property acquired.
- 16-13-21. Action on certificates or attached coupons; receivers.
- 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
- 16-13-22a. Grants, loans and advances.

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- 16-13-22b. Contracts for abatement of pollution.
- 16-13-22c. Refunding bonds.
- 16-13-22d. Subordination of bonds.
- 16-13-22e. Operating contract.
- 16-13-22f. Exemption of bonds from taxation.
- 16-13-22g. Covenants with bondholders.
- 16-13-23. Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected.
- 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.
- 16-13-24. Article to be construed liberally.

Editor's notes.—Acts 1989, 1st Ex. Sess., c. 2, redesignated the board of health and the department of health as the division of health within the department of health and human resources. See also, Acts 1997, c. 225.

Constitutional.—See *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934); *Stevenson v. City of Bluefield*, 39 F. Supp. 462 (S.D.W. Va., 1941); *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Obligations incurred by a city under the authority of this article permitting the issuance of revenue bonds for the construction of sewers are not to be deemed "debts" within the constitutional inhibition. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va., 1957), commented on in 60 W. Va. L. Rev. 106 (1957).

In general.—The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Conflict of laws.—There is no conflict between this article, authorizing a city to incur expenses which are to be payable solely from the proceeds of revenue bonds, and the general statutory limitations on the expenditure of money and incurring of obligations with respect to funds produced by tax levies. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W.

Va., 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Legislative intent.—It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. *Op. Atty. Gen.*, April 3, 1979.

Limitations.—Where a city made an agreement with the federal works administrator under the War Mobilization and Reconversion Act of 1944 with regard to advances of money to the city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, the limitation imposed by this article would be read into the agreement, since the parties are presumed to know the extent of the city's authority to make a binding contract. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va., 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Nonresidents.—Municipality may not compel nonresidents to connect with a municipal sewer extended without its corporate limits. *48 Op. Atty. Gen.*, 19 (1958).

Ordinance held valid.—An ordinance of a municipal corporation, creating a sanitary board and authorizing for the construction of a sewer system, was within the police power of the State delegated to municipalities by this chapter. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

SEWAGE WORKS OF MUNICIPAL CORPORATIONS § 16-13-2
 § 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation, a sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b (b) § 8-20-1b1, article twenty, chapter eight of this code, and shall have authority to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property; and any such municipality may serve and supply the facilities of such sewerage system within the corporate limits of such municipality and within the area extending twenty miles beyond the corporate limits of such municipality. Provided, That such municipality shall not serve or supply the facilities of such sewerage system within the corporate limits of any other municipality without the consent of the governing body thereof. No obligations shall be incurred by any such municipality and/or sanitary district in such construction or acquisition except such as is payable solely from the funds provided under the authority of this article. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118.)

Use of territory in adjoining state authorized.—By this section and § 16-13-22 the legislature intended, insofar as it could, to confer upon such municipalities as might find its exercise convenient, the right to make necessary and appropriate arrangements for the disposal of their sewage, even where that course involved the use of territory in an adjoining state. *Bernard v. City of Bluefield*, 117 W. Va. 556, 186 S.E. 298 (1936).
 Quoted in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).
 Cited in *City of Beckley v. Craighhead*, 125 W. Va. 484, 24 S.E.2d 908 (1943); *Delandae v. Morgantown Water Comm'n.*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

§ 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen (b) § 16-13-18 of this article. The term "works" as used in this article shall be construed to mean and include a works for the collection and/or treatment, purification and

disposal of sewage, in its entirety or any integral part thereof. The term "municipality" as used in this article shall be construed to mean any municipal corporation, incorporated city, town, village or sanitary district in the State of West Virginia. The term "governing body" as used in this article shall be construed to mean the mayor and council or other legally constituted governing body of any municipality. The term "board" when hereinafter used in this article shall be construed to mean the sanitary board as set up in section eighteen of this article. (1933, Ex. Sess., c. 25, § 2.)

Quoted in State ex rel. City of Wheeling v. 149 F. Supp. 366 (S.D. Va. 1957); Delardus v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960); Montganton Water Comm'n., 148 W. Va. 776, (Cited in United States v. City of Charleston, 137 S.E.2d 426 (1964)).

§ 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of five thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and shall other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding require-

ments and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133.)

Immunity. — A contractor under contract with the sanitary board of a municipality for construction of a sewage treatment and disposal system is not entitled to the governmental immunities of the municipality incident to the construction project. West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Third party. — Where a contract between a municipal sanitary board and a contractor, providing for the construction of a sanitary sewage system, provides inter alia that "existing surface, overhead or subsurface structures damaged or destroyed by reason of the contractor's operations shall be promptly repaired or replaced in a satisfactory manner at the cost and expense of the contractor," and the contractor by job order requests enters into a contract with an existing water company to remove certain of the latter's water pipes which interfere with the construction of the sewer system, the contractor, in a notice of motion for judgment proceeding instituted by the water company, is liable for the expense so incurred. West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).
Stated in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-4. Payment of preliminary expenses of surveys, etc.

All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner: Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality: Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided. (1933, Ex. Sess., c. 25, § 4.)

Advances. — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sanitary board in accordance with the provisions of §§ 16-13-1, 16-13-8 and this section. The sanitary board is an agency of the city. This article merely requires that the construction and maintenance of the project be under the supervision and control of the sanitary board. A method is provided whereby the sanitary board may meet its own necessary preliminary expenses; but the city, in the early stages of the project, during that period in which the city has not even decided to go ahead with the work, and when there is no sanitary board in existence, is not prevented by any provision in the article from obtaining advances for plan preparation by any procedure which it may see fit to adopt. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

§ 16-13-5. Ordinance necessary before acquisition or construction of works.

Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description of the works; and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the premises. (1933, Ex. Sess., c. 25, § 5.)

Quoted in *United States v. City of Charles-*
ton, 149 F. Supp. 866 (S.D.W. Va. 1957).

Stated in *State ex rel. City of Wheeling v.*
Reinick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-6. Publication and hearing upon ordinance.

After such ordinance shall have 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 (§§ 59-3-1 et seq.), chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and 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 first date of publication of such abstract and notice which shall not be prior to the last

date of publication of such abstract and notice, and present protests. 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: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto. (1933, Ex. Sess., c. 25, § 6; 1967, c. 105; 1981, 1st Ex. Sess., c. 2.)

§ 16-13-7. Acquisition by condemnation or purchase.

Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection therewith may have and exercise all the rights, powers and privileges of eminent domain granted to municipal corporations under the laws relating thereto. Title to property condemned shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the provisions of chapter fifty-four (§§ 54-1-1 et seq.), of the Code of West Virginia, one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto: Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five (§§ 16-13-5) hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof. (1933, Ex. Sess., c. 25, § 7.)

§ 16-13-8. Cost of works.

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements and franchises

deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof. (1933, Ex. Sess., c. 25, § 8.)

Advances. — Advances from the United States to a city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system represent a part of the cost of the works which should have been repaid out of the first proceeds received from the sale of the first issue of revenue bonds. Such repayment would not in any way increase the cost of the works; it was the very first item of expense incurred in connection with the works. Under the agreement between the city and the United States, it was a liability from the moment construction of the sewage treatment and disposal plant was begun. No disadvantage would result to bondholders as a result of the payment of this just debt out of the proceeds of a future revenue bond issue. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va., 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

§ 16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of the works, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for such payment, and said bonds shall not, in any respect, be a corporate indebtedness of such municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of such bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93.)

Cross references. — See notes to § 16-13-8. **Applicability.** — The provisions of this article become a part of the contract between the

Preliminary expenses. — It is foreseen, as shown in this section, that a city may probably incur expenses in "determining the feasibility or practicability of the enterprise." Such determination would of course be made prior to the issuance of any revenue bonds, and probably before the creation of a sanitary board. It might often result in a rejection of the project altogether, in which event no revenue bonds would be issued, and any obligation incurred by the city might prove to be uncollectible. On the other hand, if the project be undertaken by the city, whatever loans may have been made on the faith of the revenue bonds would or should be included in the cost of the works and repaid out of the proceeds of the bonds. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va., 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

municipality and the bondholders as effectually as if written verbatim in the bonds. The bondholders are bound by their contract in this

instance just as firmly as in any other legal contract. Consequently, the bonds do not create a corporate indebtedness of the municipality. *Brewer v. City of Point Pleasant*, 144 W. Va. 572, 172 S.E. 717 (1934); *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va., 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Contracts between municipalities. — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town could enter into a contract whereby the city agreed to construct a sewage disposal facility and the town agreed to contribute to the cost of the construction of the facility in return for the right to use the facility.

§ 16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus

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of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter (1933, Ex. Sess., c. 25, § 10; 1970, c. 11; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

§ 16-13-11. Additional bonds to extend or improve works.

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bond upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 11.)

§ 16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds.

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise. (1933, Ex. Sess., c. 25, § 12.)

§ 16-13-13. Application of revenue from bonds; lien.

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four (§ 16-13-4) of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the apportionment sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so

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applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

Quoted in United States v. City of Charles-
ton, 149 F. Supp. 866 (S.D.W. Va. 1957).

§ 16-13-14. Securing bonds by trust indenture.

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement, operation, repair maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. (1933, Ex. Sess., c. 25, § 14.)

§ 16-13-15. Sinking fund; transfer of balance of net revenues.

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by

ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart 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 with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto. (1933, Ex. Sess., c. 25, § 15; 1933, 2nd Ex. Sess., c. 48; 1986, c. 118.)

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the

sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three § 59-3-1 et seq., chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided. Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, however, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty days after 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 board collecting such charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities to any delinquent user of either until all delinquent charges for both water facilities and sewer facilities, including reasonable

interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105.)

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see R.C.P. 2.

Applicability. — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the district court implicitly rejected the commission's interpretation. *City of Charleston v. Public Serv. Comm'n.* 57 F.3d 385 (4th Cir. 1995), cert. denied. — U.S. —, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

Discrimination not shown. — Charges made against the users of a city sewer system were based upon the amount of water used upon the premises as indicating the extent to which the sewers were used. The charges were subject to a deduction of the amount of water retained on the premises, such amount to be determined by a meter installed by the consumer and used to record enticement of water that had come on the property but had not been disposed of through the sewers. It was held that the method under which the charges were as-

essed was neither capricious nor unfair although certain users had been unable to install meters used to measure their deductions. *Houchins v. City of Beckley.* 127 W. Va. 306, 32 S.E.2d 286 (1944).

Jurisdiction. — The fact that this section speaks of the enforcement of the lien in a "civil action" should not be construed as placing that jurisdiction in our courts of law simply because the word "action," strictly applied, does not usually refer to chancery practice. *City of Beckley v. Crimghend.* 125 W. Va. 484, 24 S.E.2d 908 (1943).

Municipal sewer system is subject to jurisdiction of public service commission, so municipality is required to file its rates with the commission for approval in accordance with § 24-2-1 et seq. 45 Op. Atty Gen. 642 (1954).

Applied in *Brewer v. City of Point Pleasant.* 114 W. Va. 572, 172 S.E. 717 (1934).

Quoted in *State ex rel. City of Wheeling v. Renick.* 145 W. Va. 640, 116 S.E.2d 763 (1960). Cited in *Deardas v. Morgantown Water Comm'n.* 148 W. Va. 776, 137 S.E.2d 425 (1964).

§ 16-13-17. Municipality subject to established rates.

The municipality shall be subject to the same charges and rates established as heretofore provided, or to charges and rates established in harmony therewith, for service rendered the municipality, and shall pay such rates or charges when due from corporate funds and the same shall be deemed to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 17.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham.* 143 W. Va. 1, 98 S.E.2d 891 (1957).

§ 16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body. Provided, That, in the event of an acquisition or merger of an existing sewage works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the

municipality served by the board. During the construction period one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his public office. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. Such mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer but the secretary and the treasurer may be one and the same, who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board. The members of the sanitary board shall receive such compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (1933, Ex. Sess., c. 25, § 18; 1939, c. 96; 1953, c. 146; 1957, c. 137; 1992, c. 95.)

In general. — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. *State ex rel. City of Wheeling v. Renick.* 145 W. Va. 640, 116 S.E.2d 763 (1960).

Construction. — There is no repugnancy between the provisions of this article and §§ 24-1-1, 24-2-1 or 24-3-1, and for these reasons, the provisions of this article do not operate to repeal any of those sections. *State ex rel. City of Wheeling v. Renick.* 145 W. Va. 640, 116 S.E.2d 763 (1960).

Adopting state. — Since the incorporation in the state of Virginia was the only plan by which the power intended to be granted by the legis-

lature to a city to construct a sewage disposal plant outside the State of West Virginia could be legally effectuated, the power to so incorporate its sanitary board was a necessary and incidental right to the main power granted. *Bernard v. City of Bluefield.* 117 W. Va. 556, 186 S.E. 298 (1936).

Board membership. — When a municipal corporation has a city manager form of government, the municipality's governing board has the option of appointing either its mayor or its city manager, but not both, to the municipal sanitary board. 52 Op. Atty Gen. 217 (1967).

City treasurer. — As to scope of duties and responsibilities of city treasurer as they relate to possession of funds of a sanitary board, see 52 Op. Atty Gen. 497 (1967).

Consulting engineer. — Member of city council may not serve as consulting engineer to the sanitary board on city sewer project. 49 Op. Atty Gen. 60 (1961).

Extension of service. — A public utility is under a duty to make reasonable extensions of its services in accordance with its franchise and

charter obligations and the needs of the inhabitants within the territory covered by the franchise; and a public service commission may, where its action is not unlawful, arbitrary, or capricious, order an extension of service for the inhabitants of such territory. State ex rel. City of Wheeling v. Renuick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Legislative intent.—The provisions of this article do not revise the subject matter of §§ 24-1-1, 24-2-1 or 24-3-1, and they were not intended as a substitute for any of the provisions of those sections. State ex rel. City of Wheeling v. Renuick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-18a. Publication of financial statement.

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received, and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year. Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense. (1957, c. 138; 1967, c. 105.)

Editor's notes.—The phrase "justice of the peace" and the word "justice" when used in a context meaning "justice of the peace," are

construed to mean "magistrate." See § 50-1-17 and W. Va. Const., art. VIII, § 15.

§ 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the State (in this section called the lessee), and such lessees are hereby authorized to enter into such contracts with such owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, however, That no such contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture. The lessee shall by ordinance have power to establish, change and adjust rates and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates and charges for the service rendered in the municipality where the works are owned and operated, and such rates or charges shall be collectible and shall be a lien as herein provided for rates and charges made by the owner. The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any such contract shall, if so provided in said ordinance or trust indenture, be deemed to be a part of the revenues of the works as in this article defined and be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 19; 1981, 1st Ex. Sess., c. 2.)

Applied in City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-20. Discharge of lien on property acquired.

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full. (1933, Ex. Sess., c. 25, § 20.)

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§ 16-13-21. Action on certificates or attached coupons; receivers.

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture. (1933, Ex. Sess., c. 25, § 21.)

Rules of Civil Procedure. — As to abatement of procedural distinctions between law and equity: see Rule 2.

As to receivers: see Rule 66. As to application of rules to extraordinary remedies: see Rule 51a(5).

§ 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for ten miles outside the corporate limits thereof. (1933, Ex. Sess., c. 25, § 22.)

§ 16-13-22a. Grants, loans and advances.

Any municipality is authorized and empowered 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 or construction of said sewage works and the construction of 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 sewage works 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 to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section. (1949, c. 93; 1961, c. 107; 1980, c. 59; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

Stated in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1957).

§ 16-13-22b. Contracts for abatement of pollution.

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment. (1949, c. 93.)

§ 16-13-22c. Refunding bonds.

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds. (1949, c. 93.)

§ 16-13-22d. Subordination of bonds.

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust

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indenture pertaining hereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1949, c. 93.)

§ 16-13-22e. Operating contract.

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution authorizing the issuance of bonds hereunder, or in any trust indenture, securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1955, c. 132.)

§ 16-13-22f. Exemption of bonds from taxation.

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with sewerage system, and all the moneys, revenues and other income of such municipality derived from such sewerage system shall be exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132.)

§ 16-13-22g. Covenants with bondholders.

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the State, for the security of said bonds, may contain covenants with the holders of such bonds as to:

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

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least

SEWERAGE WORKS OF MUNICIPAL CORPORATIONS § 16-13-22g

sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage 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 sewerage system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such sewerage system, between bonds payable from such 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 such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

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

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

(i) The keeping of books of account, relating to such undertakings 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;

(j) Such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to such municipalities the power 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 such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the Constitution of the State of West Virginia. (1955, c. 132.)

§ 16-13-23

PUBLIC HEALTH

§ 16-13-23. **Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected.**

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article. (1933, Ex. Sess., c. 25, § 23.)

Quoted in State ex rel. City of Wheeling v. Benck 145 W. Va. 640, 116 S.E.2d 753 (1960).

§ 16-13-23a. **Additional powers of municipality upon receipt of order to cease pollution.**

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation or the environmental quality board waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system; and the governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the

SEWAGE WORKS OF MUNICIPAL CORPORATIONS § 16-13-23a

proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal bond commission by the manner as provided by said ordinance; and after the completion of the construction such rates or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works. No such rates or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing the rates or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided. Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required. If any rate or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality. Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds. Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in

§ 16-13-24

PUBLIC HEALTH

compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

Applied in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec. 1.

16-13A-1. Legislative findings.

16-13A-1a. Jurisdiction of the public service commission.

16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

16-13A-1c. General purpose of districts.

16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

16-13A-3a. Removal of members of public service board.

16-13A-4. Board chairman; members' compensation; procedure; district name.

16-13A-5. General manager of board.

16-13A-6. Employees of board.

16-13A-7. Acquisition and operation of district properties.

16-13A-8. Acquisition and purchase of public service properties; right of eminent domain.

Sec.

16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

16-13A-9a. Limitations with respect to foreclosure.

16-13A-10. Budget.

16-13A-11. Accounts; audit.

16-13A-12. Disbursement of district funds.

16-13A-13. Revenue bonds.

16-13A-14. Items included in cost of properties.

16-13A-15. Bonds may be secured by trust indenture.

16-13A-16. Sinking fund for revenue bonds.

16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

16-13A-18. Operating contracts.

16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

16-13A-19. Statutory mortgage lien created; foreclosure thereof.

16-13A-20. Refunding revenue bonds.

16-13A-21. Complete authority of article; lib-

PUBLIC SERVICE DISTRICTS

§ 16-13A-1

Sec.

16-13A-22. Validation of prior acts and proceedings of boards; inclusion of additional territory; and appointment of members of district boards.

16-13A-23. Validation of acts and proceedings of public service boards.

16-13A-24. Acceptance of loans; grants or temporary advances.

16-13A-25. Borrowing and bond issuance; procedure.

Sec.

16-13A-23. Validation of acts and proceedings of public service boards.

16-13A-24. Acceptance of loans; grants or temporary advances.

16-13A-25. Borrowing and bond issuance; procedure.

Editor's notes. — Acts 1980 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

Textbooks. — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Albion).

Constitutionality. — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. State

ex rel. *McMillan v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Purpose. — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. State ex rel. *McMillan v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955). The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. State ex rel. *McMillan v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public utilities. — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Atty. Gen. 447 (1963).

Cited in *Berkeley County Pub. Serv. Dist. v. Viro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987); *McHarg Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 185 S.E.2d 434 (W. Va. 1997).

§ 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best

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tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as that term is described in this subsection. The term "cigarette" includes "roll-your-own" which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of cigarette, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual cigarette.

(b) "Master settlement agreement" means the settlement agreement (and related documents) entered into on the twenty-third day of November, one thousand nine hundred ninety-eight, by the state and leading United States tobacco product manufacturers.

(c) "National tobacco community trust" means the trust fund agreed to by leading United States tobacco product manufacturers, to be established and funded by them for the sole benefit of state tobacco growers.

(d) "Tobacco grower" means a person who has a direct financial interest in planting, cultivating and harvesting tobacco for sale. Tobacco grower includes a person who possesses a quota to market tobacco as administered by the United States Department of Agriculture.

(e) "Trust" means the national tobacco community trust as defined in subsection (c) of this section. (1999, c. 283.)

§ 16-9C-3. Creation of board.

There is hereby created a board to be known as the "state tobacco growers' settlement board" consisting of three members: the governor, the attorney general and the commissioner of agriculture, or their designees. The governor or his or her designee shall serve as the chair, the commissioner of agriculture or his or her designee shall serve as the vice chair, and the attorney general or his or her designee shall serve as the secretary. (1999, c. 283.)

§ 16-9C-4. Duties and responsibilities of the state tobacco grower board.

The duties and responsibilities of the board shall include, but are not limited to:

- (a) The consummation of a settlement with leading United States tobacco product manufacturers for the exclusive benefit of state tobacco growers;
- (b) The execution of all necessary written agreements relative to the national tobacco community trust to ensure state tobacco growers' receipt of funds directly from the trust;
- (c) Consultation with tobacco growers within the state in order to determine how funds allocated by the national tobacco community trust shall be

uted among state tobacco growers to compensate them for the adverse effect of decreased consumption, demand and price for cigarettes;

(d) The submission of a plan to the national tobacco community trust identifying state tobacco growers and the distribution of trust funds to state tobacco growers; and

(e) The certification of instructions annually to the national tobacco community trust regarding distribution of funds from the trust directly to the state tobacco growers during the twelve year payment period, beginning in the year one thousand nine hundred ninety-nine. (1999, c. 283.)

ARTICLE 13.

SEWAGE WORKS AND STORMWATER WORKS.

Sec.	Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.	16-13-17. Government units subject to established rates.
16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.	16-13-18. Supervision of works by sanitary board; organization of board qualifications, terms and compensation of members.
16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.	16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.	16-13-22. Powers conferred in addition to existing powers; jurisdiction over side corporate limits.
16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.	16-13-22E. Exemption of bonds from taxation.
	16-13-22G. Covenants with bondholders.
	16-13-23a. Additional powers of municipalities upon receipt of order to cease pollution.

§ 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation:

- (1) A sewage collection system and/or a sewage treatment plant or plants intercepting sewers, outfall sewers, force mains, pumping stations, ejecta stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined system pursuant to section one-b [§ 8-20-1b], article twenty, chapter eight of this code; and
- (2) A stormwater collection system and control system, including all lines pumping stations and all other facilities and appurtenances necessary or

useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

(b) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property.

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: 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) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district 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. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118; 2001, c. 212.)

Effect of amendment of 2001. — Acts end; in (c), added "Any", inserted "and a stormwater system and associated stormwater management program", substituted "may not serve" for "shall not serve", inserted "or stormwater system", added the proviso; in (d), deleted "such" preceding "municipality" and "construction"; and added (e).

§ 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.

(a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen [§ 16-13-18] of this ar

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

(1) "Board" means the sanitary board as set up in section eighteen [§ 16-13-18] of this article.

(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporated city, town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof.

(5) "Stormwater system" or "stormwater works" 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, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levees, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not 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: Provided, That, as used in this article, "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.

(7) "Works" means sewage works and stormwater works either separately or collectively. (1933, Ex. Sess., c. 25, § 2; 2001, c. 212.)

Effect of amendment of 2001. — Acts end; in (a), added "and a stormwater system and associated stormwater management program", substituted "may not serve" for "shall not serve", inserted "or stormwater system", added the proviso; in (d), deleted "such" preceding "municipality" and "construction"; and added (e).

Effect of amendment of 2001. — Acts end; in (a), added "and a stormwater system and associated stormwater management program", substituted "may not serve" for "shall not serve", inserted "or stormwater system", added the proviso; in (d), deleted "such" preceding "municipality" and "construction"; and added (e).

tion of "sewerage works", "stormwater system" or "stormwater works", "stormwater management program", and "works".
 Stated in Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n, 204 W. Va. 279, 512 S.E.2d 201 (1998).

§ 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

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

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article. (1933, Ex. Sess., c. 25, § 3; 1989, c.

93, 2001, cc. 143, 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, deleted "such" throughout the section; in the third undesignated paragraph, substituted "the sum of ten thousand dollars" for "the sum of five thousand dollars"; in the fourth undesignated paragraph, substituted "may consider expedient" for "may deem expedient"; inserted "stormwater conduits" and added "including... improvement activities" at the end; and made other minor changes.

Editor's notes. — Acts 2001, c. 143, effective July 10, 2001, also amendments therein have been deemed superseded by those found in Acts 2001, c. 212, which are set out above. The superseded amendment, set out below, would have substituted "the sum of ten thousand dollars" for "the sum of five thousand dollars".

Chapter 143 read:

"The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as herein after provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided

under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article."

§ 16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93; 2001, c. 212.)

Effect of amendment of 2001. — Acts the works referred to in this article for the 2001 c. 212, effective July 13, 2001, substituted "works" and substituted "the bonds may not" for "the" for "such" throughout, substituted "any of" for "the bonds shall not".

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

- (a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works; and
- (b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-O legal advertisement in compliance with the provisions of article three §§ 59-3-1 et seq.; chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional users

thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided. Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality and in connection with such action said lien may be foreclosed against such lot parcel of land or building, in accordance with the laws relating thereto. Provided, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of thirty 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 rates, fees and charges are fully paid.

The board collecting such rates, fees or charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25 § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212.)

Effect of amendment of 2001. — Acts the; in the third paragraph of (b), substitute 2001, c. 212, effective July 13, 2001, inserted "shall be deemed" for "shall be deemed"; 1 "fees" preceding "charges" throughout; in the seventh paragraph of (b), deleted "however" following "such" from the end; first paragraph, deleted "such" from the end; inserted (b); in the second paragraph of (b), deleted "The governing body" and the last sentence.

§ 16-13-17. Government units subject to established rates

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same rates, fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered to the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined and be applied a

herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 17; 2001, c. 212.)

Effect of amendment of 2001. — Acts this article" for "as hereinbefore provided", inserted "county, state or federal government", "Government units" for "Municipality" in the substituted "shall be considered" for "shall be section heading; inserted "fees" preceding deemed", substituted "the revenues" for "such charges" throughout; inserted "and any revenues"; and added the last sentence. county... works", substituted "as provided in

§ 16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body. Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years, respectively, and upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment of their

reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (1933, Ex. Sess., c. 25, § 18; 1939, c. 96; 1953, c. 146; 1957, c. 137; 1992, c. 95; 2001, c. 212.)

Effect of amendment of 2001. — Acts "fees" for "said appointees"; deleted "such" preceding "term"; substituted "The mayor" for "Such mayor"; and in the last paragraph, deleted "such" preceding "compensation". The third paragraph, substituted "The appointees"

§ 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties. Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

The lessee shall by ordinance have power to establish, change and adjust rates, fees and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates, fees and charges for the service rendered in the municipality where the works are owned and operated, and such rates, fees or charges shall be collectible and shall be a lien as herein provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any contract shall, if so provided in said ordinance or trust indenture, be considered to be a part of the revenues of the

works as in this article defined and be applied as herein provided for the application of the revenues. (1933, Ex. Sess., c. 25, § 19, 1981, 1st Ex. Sess., c. 2, 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, inserted "fees" following "rates" throughout; in the first paragraph, inserted "or stormwater works" substituted "state" for "State", deleted "such" preceding "contracts", deleted "such" following "Provided", deleted "such" preceding "contract" in the proviso; in the last paragraph, deleted "such" preceding "contract", and substituted "considered" for "deemed" in the last sentence.

§ 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof. 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.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 22, 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, in the first paragraph, substituted "twenty miles outside" for "ten miles outside", added the proviso, and added the last paragraph.

§ 16-13-22f. Exemption of bonds from taxation.

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "works" for "sewerage system" twice, and substituted "state" for "State".

§ 16-13-22g. Covenants with bondholders.

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

- (a) The purpose or purposes to which the proceeds of sale of such bonds, or revenues derived from the sewerage system or stormwater system

applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depository for any of such funds;

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

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

- (d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater 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 sewerage system or stormwater system;

- (e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater 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 such bonds rescinded and repealed;

- (g) Budgets for the annual operation, maintenance and repair of such sewerage system or stormwater system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;
- (h) The amounts of insurance to be maintained upon such sewerage system or stormwater system, or any part thereof, and the use and disposition of the proceeds of any insurance;

- (i) The keeping of books of account, relating to such undertakings 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;
- (j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding

standing that other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to the municipalities the power 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 such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia. (1955, c. 132, 2001, c. 212.)

Effect of amendment of 2001. — Acts throughout; in the first paragraph, substituted 2001 c. 212, effective July 13, 2001, substituted "the bonds" for "said bonds"; in (f), deleted "the" for "such" throughout, substituted "state" for "such" preceding "defaults"; in (j), deleted for "State" throughout, inserted "or stormwater system" following "sewerage system" throughout, substituted "considered" for "deemed".

§ 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing sewer system and/or stormwater system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage or stormwater, and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

After the completion of the construction such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works or entire stormwater works.

No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication of notice as a Class II-O legal advertisement in compliance with the provisions of article three §§ 59-3-1 et seq., chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided. Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality.

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds. Provided, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental

§ 16-13A-2

PUBLIC HEALTH

quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance 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. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, substituted "he" for "said" throughout, inserted "fees" following "rates" throughout, in the first paragraph, inserted "and/or stormwater system" following "existing sewer system", inserted "or stormwater system" following "such system", in the second paragraph, inserted "or stormwater" following "sewage", inserted "or stormwater facilities" following "sewer facilities", in the fourth paragraph, added "or entire stormwater works" to the end, in the sixth paragraph, deleted "such" following "fixing and publication of", in the eighth paragraph, deleted "such" preceding "rates" twice, and in the last paragraph, added the proviso.

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec. 16-13A-4. Board chairman; members' compensation; procedure; district name.

§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infinging upon powers of county commission; filing list of members and districts with the secretary of state.

Applied in Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n, 204 W. Va. 279, 512 S.E.2d 201 (1998).

§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

Applied in McClound v. Salt Rock Water Pub. Serv. Dist., 207 W. Va. 453, 533 S.E.2d 679 (2000).

PUBLIC SERVICE DISTRICTS

§ 16-13A-4

§ 16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

TOWN OF TUNNELTON: Application for certificate of incorporation

The certificate of W. S. Taylor, Frank Watson, and Eugene McGinnis, who it appears are qualified voters within the boundary proposed to be incorporated, and who were selected by a majority of the qualified voters present at the election held by the said voters, showing that a majority of the said qualified voters at said election cast their votes in favor of said incorporation being this day filed, and satisfactory proof being presented to the Court that all the provisions of Chapter 47 of the Code of West Virginia have been complied with; it is ORDERED that the Clerk of this Court do issue a certificate of the incorporation of said town of Tunnelton as provided by law. And it is further ORDERED that A. J. Bonafield, Eugene McGinnis and W. S. Taylor, legal voters residing within the territory so incorporated are hereby appointed to act as commissioners of election to hold a first election for officers of said corporation, at such time and place and under such regulations as the law provides.

Enter, March Term, 1897.

S/ Jno. Homer Holt
Judge.

Entered March 24, 1897.

S/ J. W. Watson
Clerk.

A CERTIFIED TRUE COPY FROM THE RECORD, Chancery Order Book No. 11,
Page No. 287; Certified this 15th day of April, 1969.

ATTEST: Richard A. Smith
Clerk of the Circuit Court

RICHARD A. SMITH
EXX. CIRCUIT COURT
PRESTON COUNTY
KINROSS, W. VA.

CERTIFICATION

Certified a true copy of the Certificate of Incorporation of the Town of Tunnelton.

Dated: April 19, 2002



Recorder, Town of Tunnelton

[SEAL]

five cents; for other services the same as allowed a con-
stable.

Section 3. Witnesses shall be allowed for each days
attendance, fifty cents.

* * * *

CHAPTER 5

Rules For The Government Of The Council

Be it ordained by the Common Council of the town of
Tunnelton, W. Va. that we adopt the following Rules for
the government of the Council:

Rule 1. The meeting of the Council shall be held at
the Council chamber at such time as may be fixed by
general or special orders of adjournment.

Rule 2. The Mayor, presiding officer of the Council
or any three members, shall have power to call special
meetings by reasonable notice to each member within
the town.

Rule 3. The Mayor shall take the chair at the hour
appointed for the Council to meet, and have called the
members to order shall preserve decorum and enforce a
strict observance of these rules.

Rule 4. All questions of order shall be decided by
the Mayor, subject to an appeal to the Council.

Rule 5. If any member transgresses the rules of the
Council, the Mayor shall, or any member may, call him
to order, in which case the MEMBER called to order
shall immediately sit down and be silent unless permitted
by the Council to explain, and the Council, if appealed
to, shall decide the matter.

Rule 6. An appeal from the decision of the Mayor
or Chairman upon a question of order, shall be allowed
to be put only upon the demand of two members besides
the appellant.

Rule 7. The question upon an appeal shall be put in
the following form: Shall the decision of the chair be
reversed?

Rule 8. Every member present when a question is
put shall vote, unless the Council for special reason shall
excuse him.

Rule 9. Every Motion or proposition shall be reduced
to writing if the Mayor or any member requires it.

Rule 10. When a motion is made and seconded it
shall be deemed to be in the possession of the Council,
and shall be stated by the Mayor; or, being in writing,
read by the Recorder previous to Debate; such motion
may be withdrawn at any time before decision or amend-
ment by the consent of the Council.

Rule 11. The order of proceedings at the meetings
of the Council shall be as follows: First, the unfinished
business upon the minutes; second, the report from com-
mittees; third, reports from any officer or officers of the
Town; fourth, petition for redress or grievances; fifth,
petitions of all kinds; sixth, miscellaneous business.

Rule 12. The order of proceedings may be suspended
or changed at any meeting (for the time only) by a vote
of the majority of the members present.

Rule 13. All questions shall be put in this form: All
in favor of (as the case may be) say aye; contrary, no;
and in doubtful cases, or where an affirmative vote of
two-thirds of the members present is necessary to carry
the proposition, the Mayor may direct or any member
may call for a division.

Rule 14. The call for the previous question shall be
decided by the following proposition; Shall the main
question be put? The call to be admitted only on the de-
mand of three members, and until decided shall preclude
all amendments or debate of main question.

Rule 15. Any member may call for a division of the
question where the same will admit thereof.

Rule 16. Any two members shall have the liberty to
protest against any ordinance or resolution of the Coun-
cil which they think injudicious to the public, or any in-
dividual, and have the reason of their protest entered
upon the journal.

arise and respectfully address himself to the Mayor. And the Mayor shall pronounce the name of the person entitled to speak, when more than one member claims the right at the same time; but no member shall speak more than twice on the same question without leave of the Council.

* * * *

CHAPTER 6

Salaries Of Officers

Be it ordained, by the Common Council of the Town of Tunnelton that the Mayor, Recorder, and the Superintendent of Roads, Streets and Alleys, shall each receive a compensation for his services.

Section 1. The Mayor shall receive \$45.00 per annum; The Recorder for his services shall receive \$75.00 per annum; The Superintendent of Roads, Streets and Alleys shall receive for his services \$45.00 per annum.

Section 2. Said Superintendent of Roads, Streets and Alleys, shall be elected Treasurer of the Town of Tunnelton, W. Va.

* * * *

CHAPTER 7

Traffic Ordinance

Section 1. No person shall operate, drive, or propel and no owner or controller thereof, riding thereon or (herein, shall cause or permit to be operated, driven, ridden or propelled on any street of the town of Tunnelton, W. Va., any horse or vehicles, recklessly or negligently or at a speed in any manner so as to endanger the life, limb or property of any person or damage any property; provided that a rate of speed exceeding Fifteen (15)

Rule 17. When the Council is called the names shall be in alphabetical order.

Rule 18. The first reading of the ordinance proposed shall be information, and if objections be made the question shall be: Shall the proposition be rejected? If no objections be made, or the question to reject be lost, the ordinance shall go to second reading without further question, after which it shall be subject to amendment or debate.

Rule 19. When a question is before the Council no motion shall be received, unless to amend, postpone or commit the main question, or to adjourn.

Rule 20. A motion to adjourn shall always be in order, unless the Council is engaged in voting.

Rule 21. A motion to adjourn or lay on the table shall be decided without debate.

Rule 22. An ordinance or resolution, after commitment and report thereon, may be recommitted at any time previous to its final passage.

Rule 23. All standing committees shall be appointed by the Council. All select committees shall be appointed by the Mayor, unless otherwise ordered by the Council.

Rule 24. The standing committees shall be as follows, viz. On Finance. On Streets and Alleys. And on Ordinances.

Rule 25. The standing committees shall each consist of three members, unless otherwise ordered at that time.

Rule 26. All reports of committees shall be in writing, signed by the members or chairman, and shall specify in the form of a resolution or ordinance at the close of a report such action in the premises as the committee may recommend as proper for the Council to adopt.

Rule 27. No member shall leave the meeting of the Council without permission.

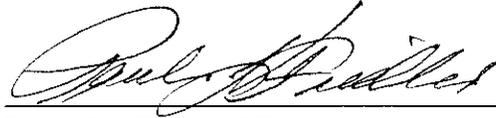
Rule 28. Charges against any officer of the Town shall be preferred in writing and verified by affidavit, and having been read shall be laid on the table or referred to a committee for investigation without debate.

Rule 29. When a member is about to speak he shall

CERTIFICATION

Certified a true copy of the Administrative Ordinances duly enacted by the Council
of the Town of Tunnelton.

Dated: April 19, 2002



Recorder, Town of Tunnelton

[SEAL]

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, DEBRA K. OWENS, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of Mayor for the Town of
Tunnelton
of Preston County, for the ensuing term commencing on the 1st
day of July, 2001 to the best of my skill and judgment. So help me
God.

(Sign Here) Debra K Owens

Subscribed and sworn to before the undersigned this 1st day of July, 2001

Paul J. Piller

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, Paul J. Fiedler, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of Recorder for the Town of Tunnelton of Preston County, for the ensuing term commencing on the 2nd day of July, 2001 to the best of my skill and judgment. So help me God.

(Sign Here) 

Subscribed and sworn to before the undersigned this 2nd day of July, 2001

Debra K Rivers Mayor

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, Debra K. Owens, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of Treasurer for the Town
of Tunwellton
of Preston County, for the ensuing term commencing on the 2nd
day of July, 2001 to the best of my skill and judgment. So help me
God.

(Sign Here) Debra K. Owens

Subscribed and sworn to before the undersigned this 2nd day of July, 2001

Paul Stidley

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, MARY BUTLER, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of COUNCIL PERSON FOR THE TOWN OF TUNNELTOW of Preston County, for the ENSUING term commencing on the 1st day of APRIL, 2002 to the best of my skill and judgment. So help me God.

(Sign Here) Mary J. Butler

Subscribed and sworn to before the undersigned this 1st day of APRIL 2002
Debra K. Owens

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, Diana Burgess, do solemnly swear that I will support the
Constitution of the United States and the Constitution of this State; and that I will faithfully
discharge the duties of my office of Council person for the
Town of Tunnelton
of Preston County, for the ensuing term commencing on the 2nd
day of July, 2001 to the best of my skill and judgment. So help me
God.

(Sign Here) Diana Burgess

Subscribed and sworn to before the undersigned this 2 day of July 2001

Albra Rivers Mayor

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, ROSE WRIGHT, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of Council person for the
Town of Tunnelton
of Preston County, for the ENJOINING term commencing on the 2nd
day of July, 2001 to the best of my skill and judgment. So help me
God.

(Sign Here) Rose M Wright

Subscribed and sworn to before the undersigned this 2nd day of July, 2001

Debra K. Owens

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, Ed Funk, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of COUNCIL PERSON FOR THE TOWN OF TUNNELTON of Preston County, for the ensuing term commencing on the 2nd day of July, 2001 to the best of my skill and judgment. So help me God.

(Sign Here)

Ed Funk

Subscribed and sworn to before the undersigned this 2nd day of July, 2001

Debra K. Rivers (Mayor)

STATE OF WEST VIRGINIA, COUNTY OF PRESTON, SS:

I, Sharon PARKER, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; and that I will faithfully discharge the duties of my office of COUNCIL PERSON FOR THE
TOWN OF TUNWELTON
of Preston County, for the ENSUEING term commencing on the 2nd.
day of July, 2001 to the best of my skill and judgment. So help me
God.

(Sign Here) Sharon Parker

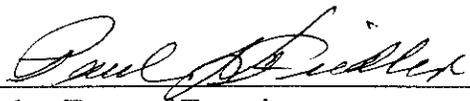
Subscribed and sworn to before the undersigned this 2nd day of July, 2001

Delra K Rivers Mayor

CERTIFICATION

Certified a true copy of the Oaths of Office of the Mayor, Recorder, Treasurer and Council Members of the Town of Tunnelton.

Dated: April 19, 2002



Recorder, Town of Tunnelton

[SEAL]



AN ORDINANCE ENACTING RATES FOR SEWER SERVICE, RATES FOR UNMETERED CUSTOMERS, EFFECTIVE DATE ON SUBSTANTIAL COMPLETION OF SYSTEM.

WHEREAS, the Town of Tunnelton finds it necessary to enact rates for sewage service throughout the entire territory served by it, in order to construct sewage treatment facilities, now, therefore, be it ordained by the Council of the Town of Tunnelton, West Virginia, that the rates and minimum charges for sewage service be enacted as follows:

Applicable in the entire territory served.

AVAILABILITY

Available for general domestic, commercial, and industrial service.

RATES

First 3,000 gallons used per month	\$ 6.98 per 1,000 gallons
Over 3,000 gallons used per month	\$ 6.98 per 1,000 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 - \$	20.94 per month
3/4" meter - \$	31.94 per month
1" meter - \$	52.35 per month
1 1/2" meter - \$	104.70 per month
2" meter - \$	167.52 per month
3" meter - \$	314.10 per month
4" meter - \$	523.50 per month
6" meter - \$	1,047.00 per month
8" meter - \$	1,675.20 per month

UNMETERED CUSTOMER CHARGE

There shall be paid by unmetered customers \$31.41 per month (based on 4,500 gallons).

DELAYED PAYMENT PENALTY

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

CONNECTION CHARGE

Prior to Construction there shall be charged a sum of \$50.00 per connection to system.

After the start of construction there shall be charged the amount of \$300.00 per connection to the system.

RETURNED CHECK CHARGE

The Town may not collect any fee greater than that charged to it by a banking institution and under no circumstances shall the fee collected by the Town exceed fifteen dollars (\$15.00).

LEAK ADJUSTMENT RATE

\$ 0.85 per 1,000 gallons.

To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customers side of the meter. This rate is to be used for consumption above the customers historical average usage.

EFFECTIVE DATE

The rates, charges, and penalties, herein, shall become effective when the sewer system is certified by the project engineer to be substantially completed.

FIRST READING: April 17, 2001

SECOND READING: May 7, 2001

THIRD READING: May 21, 2001

Debra K. Owens
Mayor

Attest: Paul Phillips
Recorder

Certificate of Publication

LEGAL NOTICE

The Town of Tunnelton will have the third and final reading and vote on the ordinance, "AN ORDINANCE ENACTING RATES FOR SEWER SERVICE, RATES FOR UNMETERED CUSTOMERS. EFFECTIVE DATE ON SUBSTANTIAL COMPLETION OF SYSTEM", at the Council Meeting on May 21, 2001 at 7:00 p.m. at the Tunnelton Town Hall. Anyone wishing to support or object to this ordinance is encouraged to attend this meeting.
5/12, 19

I, Carol Peters, Advertising Manager of the Preston County News, a weekly newspaper published at Kingwood, West Virginia, do hereby certify that the annexed public notice

SEWAGE RATES

has been published for TWO consecutive weeks in said newspaper, beginning with the issue of 5/12 and expiring with the issue of 5/19

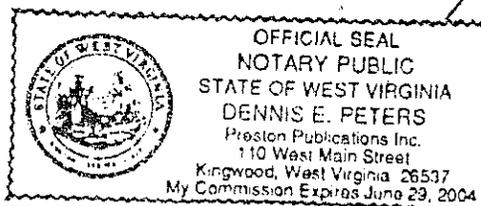
Carol Peters, Advertising Manager

Sworn to and subscribed before me this, the

14th day of, May 2001

Dennis E. Peters, Notary Public

My commission expires 6/29/2004



Certificate of Publication

LEGAL NOTICE

Municipal Rate Change Form No. 1

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that the Tunnelton Municipal Sewer System, a public utility, has adopted by ordinance on June 4, 2001, a tariff containing increased rates, and charges for furnishing sewer service to 151 customers at Tunnelton in the City of Preston.

The proposed rates and charges will become effective upon substantial completion of the system unless otherwise ordered by the Public Service Commission and will produce approximately \$ 48,245.76 annually in revenue. This is the approximate revenue for a rate increase, but for the total revenues generated by the system. The average monthly bill for the various classes of customers will be as follows:

	(\$) INCREASE	INCREASE (%)
Residential	\$ N/A	N/A %
Commercial	\$ N/A	N/A %

This notice is not applicable as the ordinance adopted is for original rates for a new system, not a rate increase for an existing system. The rates for the new system are as follows:

First 3,000 gallons used per month	\$6.98 per 1,000 gallons
Over 3,000 gallons used per month	\$6.98 per 1,000 gallons

There will be a 3,000 gallons minimum bill of \$20.94 per month for residential customers. There will be a minimum bill of \$167.52 per month for customers with a 2" sewer. The average bill will be \$31.41 per month based on 4,500 gallons.

The increases shown are based on averages of all customers in the indicated areas. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its final order on this filing. The Commission shall review and approve or modify the proposed rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges by:

- Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility; or
- 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 and charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or
- Any customer or group of customers who are affected by said change in rates and who reside within the municipal boundaries and who present a petition to the 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 the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company:

Tunnelton Town Hall.

A copy of the proposed rates is available for public inspection at the Office of the Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia.

6/9,16

I, Carol Peters, Advertising Manager of the Preston County News, a weekly newspaper published at Kingwood, West Virginia, do hereby certify that the annexed public notice

MUNICIPAL RATE CHANGE _ FORM NO. 1

has been published for TWO consecutive weeks in said newspaper, beginning with the issue of 6/9 and expiring with the issue of 6/16

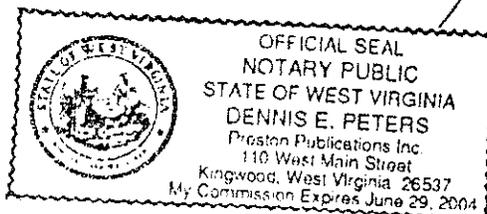
Carol Peters, Advertising Manager

Sworn to and subscribed before me this, the

11th day of June 2001

Dennis E. Peters, Notary Public

My commission expires 6/29/2004



CERTIFICATION

The undersigned, Debra K. Owens, Mayor of the Town of Tunnelton, West Virginia, a municipal corporation, hereby certifies on this 19th day of April, 2002, that the foregoing Notice was published as a Class II-O legal advertisement in the Preston County News, a newspaper of general circulation in Preston County, West Virginia, on the dates indicated therein, and that no objections or protests were received by the Town of Tunnelton or the Public Service Commission of West Virginia during the 30-day period described in said Notices.



Debra K. Owens, Mayor of the Town of Tunnelton

[SEAL]

AN ORDINANCE ESTABLISHING A SANITARY BOARD, FOUR MEMBERS, MAYOR
ONE MEMBER, NO OTHER TOWN EMPLOYEE MEMBER, THREE YEAR TERM,
BONDING, SALARY AND EXPENSES, POWER TO ESTABLISH BYLAWS,
GOVERNANCE, POWERS TO OPERATE SEWAGE TREATMENT WORKS

There is hereby established a Sanitary Board for the Town of Tunnelton sewer treatment and disposal system, including a works for the collection and/or treatment, purification and disposal of sewage. The Sanitary Board shall be paid compensation and all expenses incurred in carrying out the provisions of Chapter 16, Article 13 of the West Virginia Code and its succeeding provisions; and the Board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of said Code Article, and its succeeding provisions. The custody, administration, operation and maintenance of such works shall be under the supervision and control of the Sanitary Board herein created.

The Sanitary Board shall be composed of either the Mayor of the Town of Tunnelton, or the city manager thereof, and two persons appointed by the governing body; provided that the governing body may increase the membership to a maximum of four members in addition to the Mayor or city manager of the Town of Tunnelton. During any construction period of the works, one Board member must be a registered professional engineer, and need not be a resident of said municipality, and after completion of works, the engineer member may be succeeded by a person not an engineer.

No officer or employee of the Town of Tunnelton, whether holding a paid or unpaid office, shall be eligible to appointment

on said Sanitary Board until at least one year after the expiration of the term of his public office.

Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance, each member required by this ordinance to give such bond as covered by the Town of Tunnelton provisions. Such Mayor or city manager shall act as chairman of the Sanitary Board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the Sanitary Board. The vice chairman, secretary and treasurer shall hold office as such at the will of the Sanitary Board.

The members of the Sanitary Board shall receive such compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties.

The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses herein referred to, shall be paid solely

from funds provided under the authority of this article. The Sanitary Board shall have power to establish bylaws, rules and regulations for its own government.

The Sanitary Board shall have all powers provided by law, including but not limited to those set forth in West Virginia Code Chapter 16, and West Virginia Code Chapter 8, and their succeeding provisions.

FIRST READING: April 17, 2001
SECOND READING: May 7, 2001
THIRD READING: May 21, 2001

Debra K. Owens

Mayor

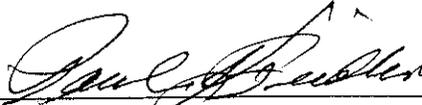
Attest: Paul J. Butler

Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the Town of Tunnelton on the 21st day of ^{Mar} ~~March~~, 2001.

Dated: April 19, 2002



Recorder, Town of Tunnelton

[SEAL]



**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2002**

**PETITION OF SANITARY BOARD TO COMMON COUNCIL
OF THE TOWN OF TUNNELTON**

The Sanitary Board of the Town of Tunnelton, heretofore duly established by the Common Council of the Town of Tunnelton, hereby respectfully petitions said Council to enact an ordinance ordering the construction and acquisition of a sewerage collection and treatment system of the Town of Tunnelton, generally described as the construction and acquisition of interceptor sewer lines, pump station, force main and sewage treatment plant, all with necessary appurtenant facilities, and particularly described in and according to the plans and specifications prepared by Thrasher Engineering, Inc., Consulting Engineers, Clarksburg, West Virginia, copies of which plans and specifications are on file in the office of the Town of Tunnelton, and providing for financing of a portion of the costs of such construction and acquisition of the issuance of the Sewerage System Revenue Bonds by the Town of Tunnelton to be issued in an amount not to exceed \$290,000.

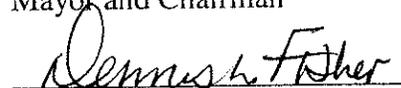
All as required by Chapter 16, Article 13 of the West Virginia Code.

Respectfully submitted this 18th day of March, 2002.

SANITARY BOARD OF THE
TOWN OF TUNNELTON



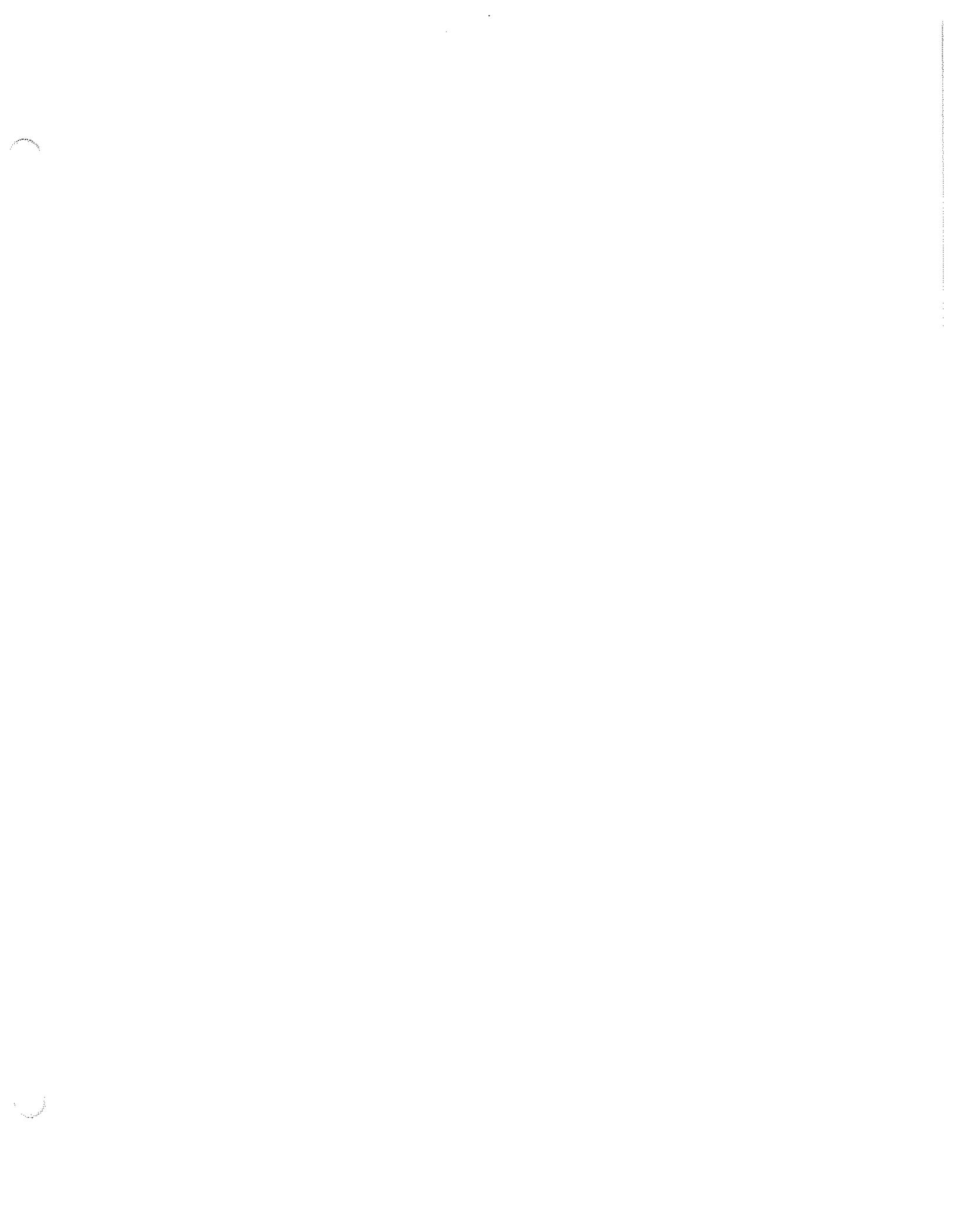
Mayor and Chairman



Member (Engineer)



Member



**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2002**

**MINUTES ON ADOPTION OF
BOND ORDINANCE ON FIRST READING**

I, Paul J. Fiedler, Recorder of the Town of Tunnelton, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the Common Council of said Town:

The Council of the Town of Tunnelton met in regular session, pursuant to notice duly given, on the 18th day of March, 2002, at Tunnelton, West Virginia, at the hour of 7:20 p.m.

PRESENT: Debra Owens - Mayor, Paul J. Fiedler, Ed Funk, Rose Wright, Diana Burgess, Kim Funk, Pat McCloud, Jack Hovatter, Sonny McCormich, Robert Wright, Holly Amos and Terry Funk

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. Thereupon, the Mayor presented a proposed Bond Ordinance and caused the Recorder to read the title thereof as follows:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF TUNNELTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF SEWERAGE SYSTEM REVENUE BONDS SERIES 2002, OF THE TOWN OF TUNNELTON IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$290,000; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR A STATUTORY MORTGAGE LIEN; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

Thereupon, on motion of Council member Ed Funk, seconded by Council member Diana Burgess, it was unanimously ordered that the said Bond Ordinance be adopted on first reading.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting be adjourned.



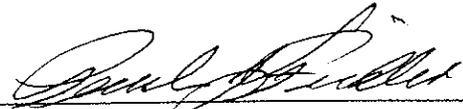
Mayor



Recorder

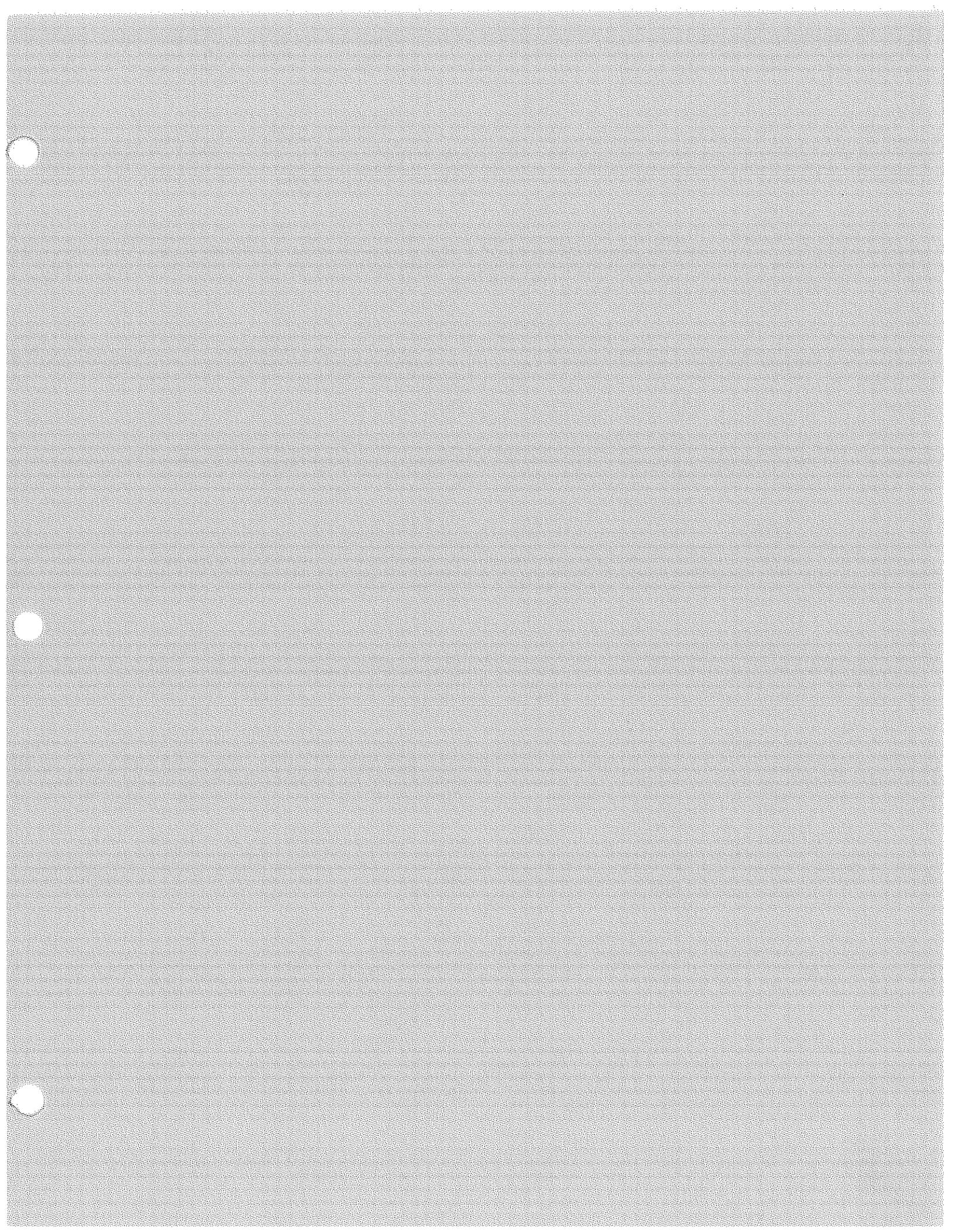
I further certify that the foregoing action of said Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 19th day of April, 2002.



Recorder

[SEAL]



**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2002**

**MINUTES ON ADOPTION OF
BOND ORDINANCE ON SECOND READING**

I, Paul J. Fiedler, Recorder of the Town of Tunnelton, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the Common Council of said Town:

The Council of the Town of Tunnelton met in special session, pursuant to notice duly given, on the 27th day of March, 2002, at Tunnelton, West Virginia, at the hour of 7:00 p.m.

PRESENT: Debra Owens - Mayor, Paul J. Fiedler, Rose Wright, Sharon Parker, and Diana Burgess

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. Thereupon, the Mayor presented a proposed Bond Ordinance to be considered for enactment on second reading and he caused the Recorder to read the title thereof as follows:

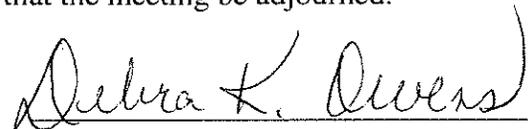
ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF TUNNELTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF SEWERAGE SYSTEM REVENUE BONDS SERIES 2002, OF THE TOWN OF TUNNELTON IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$290,000; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR A STATUTORY MORTGAGE LIEN; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

Thereupon, on motion of Council member Diana Burgess, seconded by Council member Rose Wright, it was unanimously ordered that the said Bond Ordinance be passed upon second reading.

The Mayor then tendered a proposed Notice of Public Hearing to be published with an abstract of said Bond Ordinance and caused the Clerk to read the same. Thereupon, a motion of Council member Diana Burgess, seconded by Council member Rose Wright, it was ordered that the Clerk is hereby directed to cause publication of the Notice of Public Hearing together with the abstract of said Bond Ordinance once a week for two (2) successive weeks, said public hearing to be held before this Council upon said Bond Ordinance at the hour of 9:30 a.m., on the 17th day of April, 2002, all in accordance with the requirements of applicable law.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting be adjourned.



Mayor



Recorder

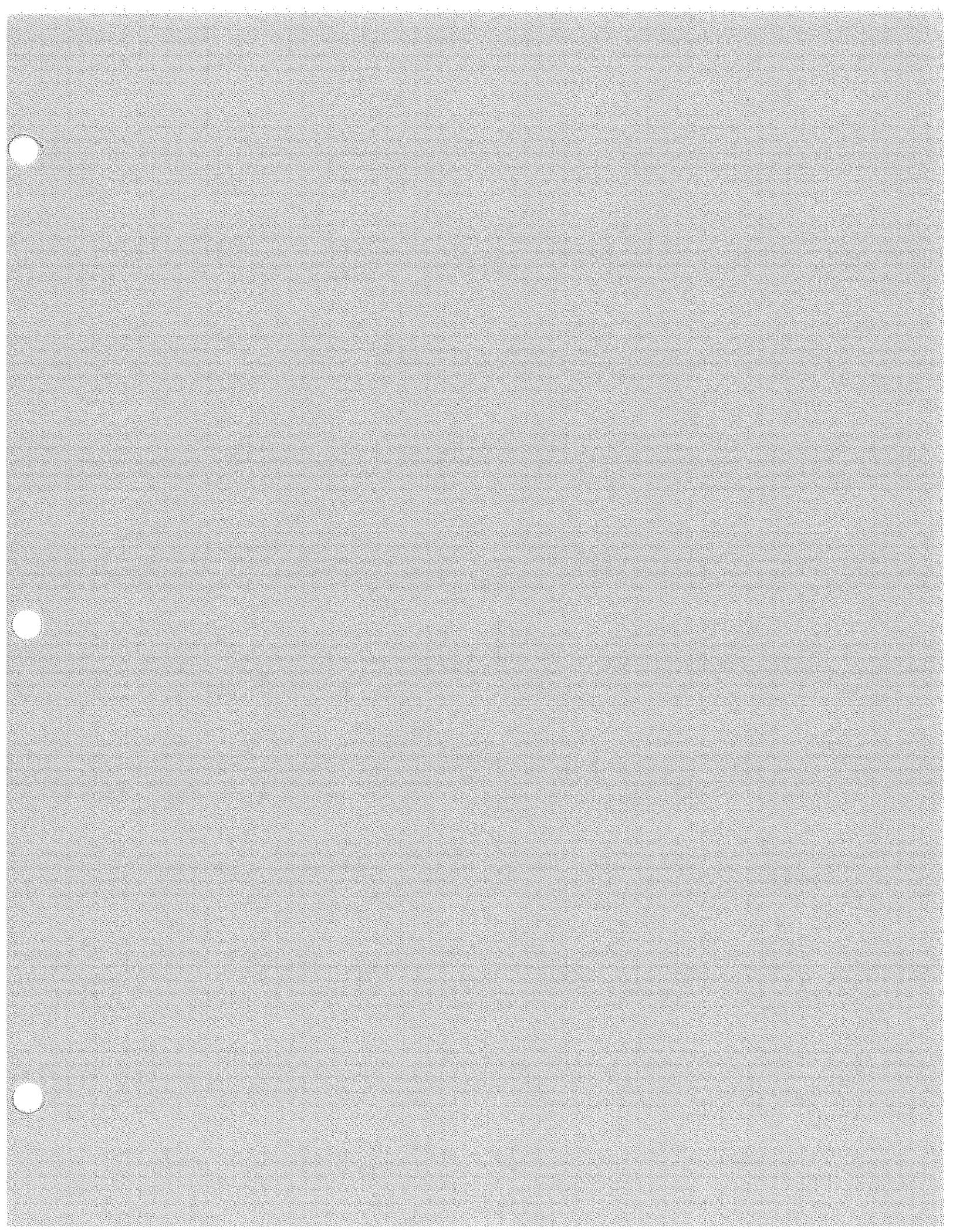
I further certify that the foregoing action of said Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 19th day of April, 2002.

[SEAL]



Recorder



**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2001**

**MINUTES OF PUBLIC HEARING AND
SPECIAL MEETING OF COUNCIL ON BOND ORDINANCE**

I, Paul J. Fiedler, Recorder of the Town of Tunnelton, I hereby certify that the following is a true and correct excerpt of the minutes of a public hearing and special meeting of the Common Council of said Town.

The Council of the town of Tunnelton met in special session, pursuant to notice given, on the 17th day of April, 2002, at Tunnelton, West Virginia, at the hour of 9:30 a.m., pursuant to the Bond Ordinance passed on first reading on March 18, 2002 and on second reading on March 27, 2002, by said Council and the Notice of Public Hearing relating thereto.

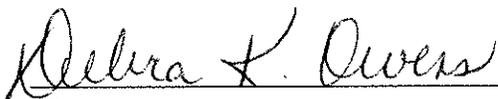
PRESENT: Debra Owens - Mayor, Ed Funk and Paul Fiedler

The Mayor called the meeting to order and stated the purpose of the meeting. She stated that the meeting was now open for public hearing and called for any persons present that would like to be recognized. Thereupon all persons desiring to protest or otherwise comment with respect to the said Bond Ordinance or to make any suggestions with reference thereto were heard.

After discussion, the Mayor stated that a motion would be required for the Bond Ordinance to be placed into effect. Thereupon, Council member Ed Funk made a motion that the Bond Ordinance be placed into effect immediately, Recorder Paul Fiedler seconded the motion, and the motion was carried unanimously. The Mayor then announced that the Bond Ordinance is in effect immediately on the date hereof.

[Rest of Page Intentionally Blank]

There being no further business to come before the meeting, on motion duly made and seconded, it was ordered that the meeting adjourn.



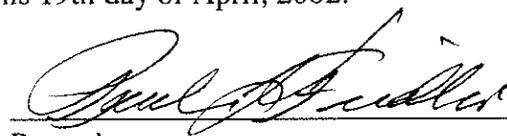
Mayor



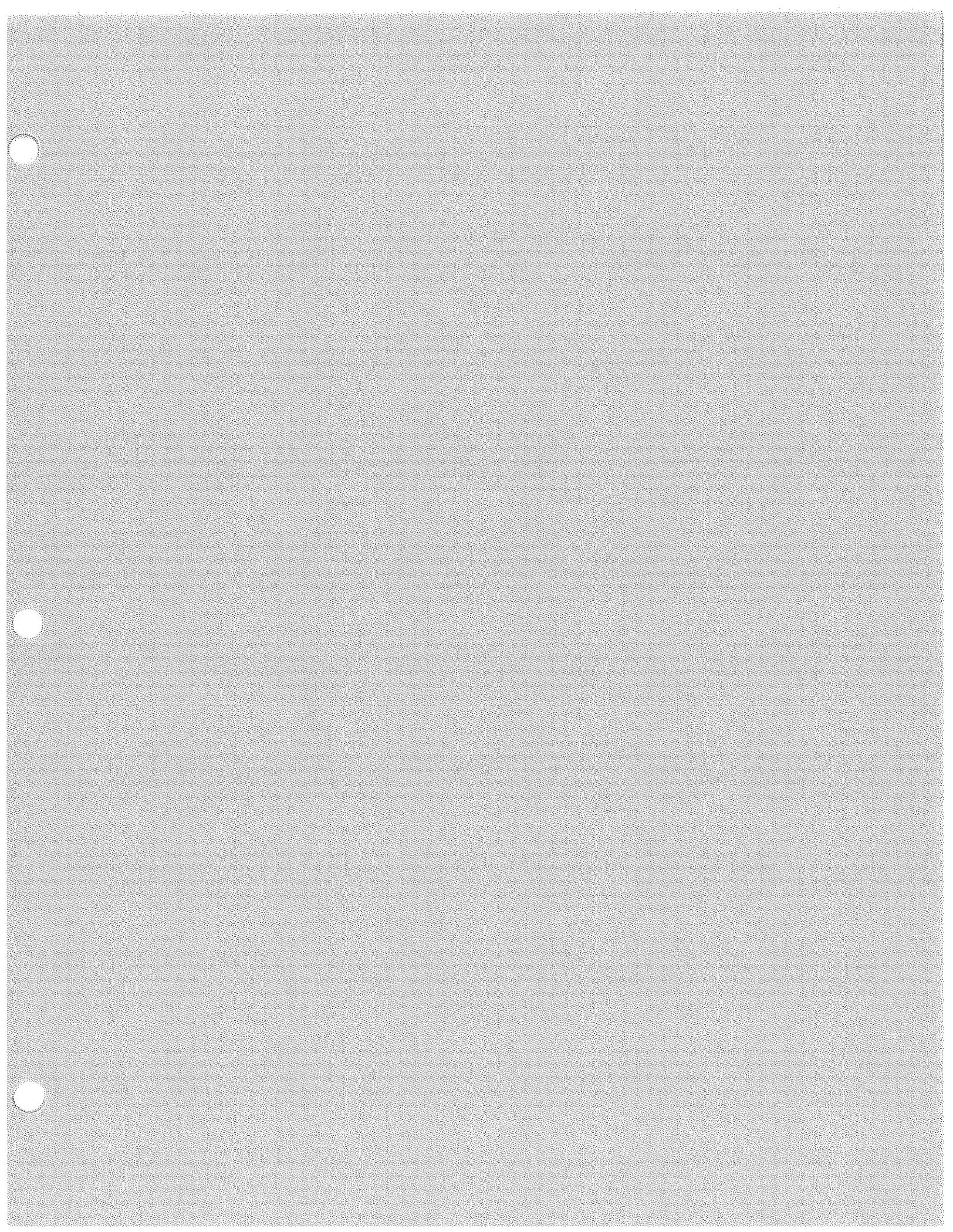
Recorder

I further certify that the foregoing action of the Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 19th day of April, 2002.



Recorder



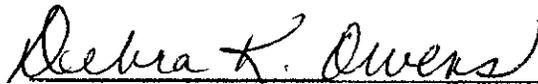
RESOLUTION RATIFYING AND AFFIRMING ALL ACTIONS TAKEN
IN CONNECTION WITH THE AUTHORIZATION AND ISSUANCE OF
THE TOWN OF TUNNELTON SEWERAGE SYSTEM REVENUE BOND, SERIES 2002

WHEREAS, the Town of Tunnelton has issued its Sewerage System Revenue Bond, Series 2002, in the aggregate principal amount of Two Hundred and Ninety Thousand Dollars (\$290,000.00) (the "Bond"); and

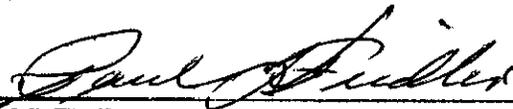
WHEREAS, Council desires to ratify and affirm each and every act taken by the Town of Tunnelton, whether by its Council, Mayor, Recorder, other officers, agents or otherwise, in connection with the authorization and issuance of the Bond.

NOW, THEREFORE, BE IT RESOLVED that all actions taken by the Town of Tunnelton, whether by its Council, Mayor, Recorder, other officers, agents or otherwise, in connection with the authorization and issuance of the Bond are hereby ratified and affirmed in each and every respect, including without limitation those actions taken at the meetings of the Council held on March 18, 2002, March 27, 2002, and April 17, 2002, and those actions taken in connection with the execution and delivery of documents dated April 19, 2002 relating to the Bond.

ADOPTED by the Council of Town of Tunnelton on May 06, 2002.



Debra K. Owens,
Mayor, Town of Tunnelton



Paul J. Fiedler,
Recorder, Town of Tunnelton

TOWN OF TUNNELTON

ORDINANCE AUTHORIZING THE ISSUANCE

OF \$290,000 OF

SEWERAGE SYSTEM REVENUE BONDS

SERIES 2002

THE TOWN OF TUNNELTON

ORDINANCE AUTHORIZING THE ISSUANCE OF \$290,000
OF SEWER REVENUE BONDS, SERIES 2002

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TOWN OF TUNNELTON

**ORDINANCE AUTHORIZING THE ISSUANCE OF \$290,000
OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 2002**

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF TUNNELTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF SEWERAGE SYSTEM REVENUE BONDS SERIES 2002, OF THE TOWN OF TUNNELTON IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$290,000; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR A STATUTORY MORTGAGE LIEN; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF
TUNNELTON:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

Section 1.02. Definitions. All capitalized terms used in the Bond Legislation and not otherwise defined herein shall have the following meanings unless the context otherwise expressly requires:

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

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

“Bank” means WesBanco Bank, Inc. of Kingwood, West Virginia , a member of the FDIC.

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

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

“Bonds” mean the Original Bonds authorized hereby, and any bonds on a parity therewith authorized to be issued hereunder.

“Construction Account” means the Town of Tunnelton Construction Account established by Section 4.01 hereof.

“Consulting Engineer” means Thrasher Engineering, Inc., Clarksburg, West Virginia, or any qualified engineer or firm of engineers which at any time hereafter may be retained by the Issuer as Consulting Engineer for the System.

“Costs” or “Costs of the Project” means those costs described in Section 1.03(E) hereof to be a part of the cost of construction and acquisition of the Project.

“Credit Agreement” means the Credit Agreement between the Issuer and the Bank relating to the Notes.

“FDIC” means the Federal Deposit Insurance Corporation.

“Fiscal Year” means each 12-month period beginning on July 1 and ending June 30.

“Governing Body” means the Council of the Issuer.

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

“Grant Proceeds” means the proceeds to be received by the Issuer from the grants described in Section 1.03 (D) hereof.

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

“Herein” means in this Ordinance.

“Independent Certified Public Accountants” shall mean any public accountant or certified public accountant or firm of public accountants or 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 Town of Tunnelton, Preston County, West Virginia, and, unless the context clearly indicates otherwise includes the Governing Body, the Sanitary Board and any commission, board or department established by the Issuer to operate and maintain the System.

“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.

“Notes” means the line of credit notes of the Issuer as defined in Section 3.01 hereof.

“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 fiscal agents and the Registrar (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.

"Original Bonds" means the \$290,000 Sewerage System Revenue Bonds, Series 2002 authorized hereby.

"Outstanding," when used with reference to Bonds as of any particular date, describes all Bonds theretofore and thereupon being executed and delivered except (i) any Bond canceled by the 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); and (iii) for purposes of consents or other action by a specified percentage of Bondholders, Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations described by Section 5.10 hereof.

"Project" shall have the meaning stated in Section 1.03(B).

"Project Costs" means all those costs set out in Section 1.03(E) hereof.

"Purchaser" means United States of America and any successor thereof, as the holder of the Original Bonds.

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

(A) Government Obligations;

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

(C) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government

National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

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

(F) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (A) through (E) above;

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

(H) 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" from Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recording Officer" means the Recorder or Clerk of the Issuer.

"Registrar" means the Recording Officer or such other person or entity designated by the Issuer as Registrar herein or by subsequent Ordinance or Resolution.

"Revenue Fund" shall mean the Sewer Revenue Fund established in Section 4.02(A) herein.

"Series 2002 Bonds Reserve Account" means the Series 2002 Bonds Reserve Account created and established by Section 4.02(B) hereof.

“Series 2002 Bonds Reserve Requirement” means the maximum amount of principal and interest which will come due on the Original Bonds in the then current or any fiscal year thereafter.

“System” means the public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, owned by the Issuer, and any improvements or extensions thereof, both within and without the Issuer.

Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

Section 1.03. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) The Town of Tunnelton (the “Issuer”), a municipal corporation of the State of West Virginia in Preston County of said State, desires to establish a sewerage system for the benefits of the inhabitants of the Issuer and the Issuer has established its Sanitary Board for such purpose by Ordinance enacted May 21, 2001, and said Sanitary Board has petitioned to the Council of the Issuer that the Project be acquired and constructed as herein provided. The inhabitants of the Issuer and surrounding area to be served by the Project urgently require that the Project be acquired and constructed as herein provided in order that adequate provision may be made for the sanitary disposal and treatment of sewage and waste water.

(B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants that there be constructed certain sewerage facilities for the Issuer, consisting of acquisition and construction of collection lines, pumping stations, treatment facilities, force mains and laterals to serve the inhabitants of the Issuer, together with all appurtenant facilities (collectively, the “Project”) and, accordingly, it is hereby ordered that the Project be acquired and constructed as more particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed with the Recording Officer of the Issuer. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

(C) It is necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2002 (the “Original Bonds”) in the principal amount of \$290,000 to finance a portion of the costs of such Project in the manner hereinafter provided.

(D) The estimated maximum cost of the acquisition and construction of the Project is \$2,697,000, of which \$290,000 will be obtained from the proceeds of the sale of the Original Bonds herein authorized; \$1,267,000 will be obtained from a United States Department of Housing and Urban Development Small Cities Block Grant; and the balance, in the amount of \$1,140,000, will be obtained in the form of an initial grant from the Rural Utilities Services of the United States

Department of Agriculture, Rural Development (“RUS”) in the amount of \$783,000 and a subsequent RUS grant in the amount of \$357,000.

(E) The cost of such acquisition and construction shall be deemed to include, without being limited to, the construction of the Project; the acquisition of any necessary property, real or personal, or interest therein; interest on the Original Bonds and the Notes or any note, bond, construction loan, or other indebtedness of the Issuer issued to provide interim financing of the Project in anticipation of the issuance of the Original Bonds prior to, during and for six months after completion of such construction; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the acquisition and construction of the Project and the financing authorized hereby.

(F) The period of usefulness of the Project is not less than forty years.

(G) There are no outstanding obligations of the Issuer which will rank on a parity with the Original Bonds as to liens and source of and security for payment.

(H) The Issuer has complied with all requirements of the law of West Virginia relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds, or will have so complied prior to issuance of the Original Bonds including, among other things, obtaining a certificate of convenience and necessity for the Project from the Public Service Commission of West Virginia by final order, the time for a rehearing and appeal of which shall have been waived or shall have expired. The rates, charges and rules as provided by Article VI hereof shall be in full force and effect.

(I) The Sanitary Board of the Issuer has presented a petition to the Issuer for enactment of this Bond Legislation.

(J) The Purchaser is expected by the Issuer to purchase the entire principal amount of the Original Bonds.

(K) The estimated revenues to be derived in each year after the enactment hereof from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Original Bonds, and all Sinking Fund, Reserve Account and other payments provided for herein.

Section 1.04. Bond Legislation to Constitute Contract. In consideration of the acceptance of the Original Bonds by the Purchaser, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and the Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Original Bonds.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS

Section 2.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the Bond of the Issuer, to be known as "Sewer Revenue Bonds, Series 2002," are hereby authorized to be issued in the principal amount of \$290,000, for the purpose of financing in part the costs of the acquisition and construction of the Project.

Section 2.02. Description of Bonds. The Original Bonds shall be issued initially in single form, No. R-1, fully registered to the United States of America and shall be dated on the date of delivery. The Original Bonds shall bear interest from date, payable monthly at the rate of 4.5% per annum, and shall be sold at the par value thereof. The Original Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the bond form hereinafter set forth.

Section 2.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Bonds, and the right to the principal of, and stated interest on, the Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 2.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever the Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new bond or bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of the Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Bonds.

Section 2.04. Registrar. The Recording Officer of the Issuer will keep or cause to be kept at the office of the Issuer, sufficient books for the registration and transfer of the Bonds, and, upon presentation for such purpose, the Recording Officer shall register the Bonds initially issued pursuant hereto and register the transfer, or cause to be registered, on such books, the transfer of the Bond as hereinbefore provided.

Section 2.05. Execution of Bond. The Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recording Officer.

Section 2.06. Mutilated, Destroyed, Stolen or Lost Bond. In case any Bond shall become mutilated, destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder of the Bond furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such bond be destroyed, stolen or lost, without surrender thereof.

Section 2.07. Bonds not to be Indebtedness of the Members of the Governing Body or the Sanitary Board of the Issuer. The Bonds shall not be or constitute an indebtedness of the Members of the Governing Body or the Sanitary Board of the Issuer but shall be payable solely from the Net Revenues and from funds in the Series 2002 Bonds Reserve Account and the respective reserve accounts for subsequent series of Bonds.

Section 2.08. Bonds Secured by Pledge of Net Revenues, Funds and Unexpended Bond Proceeds. Payment of the Bonds shall be secured forthwith by a first lien on the Net Revenues derived from the System and the funds on deposit in the Series 2002 Bonds Reserve Account and the respective reserve accounts for subsequent series of Bonds in addition to the statutory mortgage lien on the System provided for herein. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bonds, and to make the payments as hereinafter provided, together with the funds on deposit in the Series 2002 Bonds Reserve Account and the respective reserve accounts for subsequent series of Bonds and the unexpended proceeds of the Bond are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 2.09. Form of Bond. Subject to the provisions hereof, the text of the Original Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(Form of Bond)

SEWER REVENUE BOND, SERIES 2002
THE TOWN OF TUNNELTON

\$290,000

No. R-1

Date: _____, 2002

THE TOWN OF TUNNELTON (the "Issuer"), for value received, promises to pay to the order of the United States of America (the "Purchaser"), or its registered assigns, at its National Finance Office, St. Louis, Missouri, 63103, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of \$290,000, plus interest on the unpaid principal balance at the rate of [_____ per cent (_____%)] per annum. The said principal and interest shall be paid in the following installments on the following dates: Installments of interest only commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof and \$_____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount hereof is not advanced at the time of closing, the proceeds hereof shall be advanced to Issuer as requested by Issuer and approved by the Purchaser 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 hereon 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. Refunds and extra payments, as defined in the regulations of the Purchaser according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

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

While this Bond is held by an insured lender, prepayments made by Issuer may, at the option of the Purchaser, be remitted by the Purchaser to the Holder promptly or, except for final

payment, be retained by the Purchaser and remitted to the Holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Purchaser on an annual installment due date basis, shall be the date of the United States Treasury check by which the Purchaser remits the payment to the Holder. The effective date of any prepayment retained and remitted by the Purchaser to the Holder on an annual installment due date basis shall be the date of the prepayment by Issuer and the Purchaser will pay the interest to which the Holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the Holder.

Any amount advanced or expended by the Purchaser for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Purchaser 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 Issuer to the Purchaser without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Purchaser.

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 rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions and improvements to the sewerage collection and treatment system (the "System") of the Issuer, is payable solely from the Revenues to be derived from the operation of the System after there have been first paid from such Revenues the reasonable current costs of operation and maintenance of the System. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation.

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

This Bond, under the provisions of the Act hereinafter defined, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Recorder of the Issuer.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13 of the Code

of West Virginia of 1931, as amended (herein called the "Act") and Ordinance of the Issuer duly enacted on _____, 2002.

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

This Bond is given as evidence of a loan to Issuer made or insured by the Purchaser pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Purchaser and to its future regulations not inconsistent with the express provisions hereof.

THE TOWN OF TUNNELTON

[CORPORATE SEAL]

By _____
Mayor

Attest:

Recorder

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
TOTAL	\$		

(No writing on this Bond except by the Issuer as Registrar)

Date of
Registration

_____, 2002

In Whose Name
Registered

United States of America
Post Office Box 678
Morgantown, West Virginia 26505

Signature of
Recorder or Registrar

ASSIGNMENT

Pay to the Order of

UNITED STATES OF AMERICA

By _____
By: _____
(Title)

ARTICLE III

INTERIM CONSTRUCTION FINANCING

Section 3.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the gross proceeds of the Original Bonds and the Grant Proceeds, the Issuer is hereby authorized to issue and sell its Notes, in an aggregate principal amount not to exceed \$290,000. The Notes shall be issued as evidence of a line of credit from the Bank. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such date or dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Credit Agreement, the form of which is attached hereto as Exhibit A.

Section 3.02. Terms of and Security for Notes; Credit Agreement. The Notes shall be issued with such terms and secured in the manner set forth in the Credit Agreement, the form of which is hereby ratified and approved. The Mayor is hereby authorized and directed to execute and deliver the Credit Agreement on behalf of the Issuer.

Section 3.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the surplus revenues, letter of credit proceeds, if any, and other sources described in the Credit Agreement. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Credit Agreement.

Section 3.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay the trustee to be appointed by a supplemental ordinance, upon presentation by the trustee of certain certificates, the sum or sums set forth therein but not to exceed \$290,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in an ordinance supplemental hereto.

ARTICLE IV

BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 4.01. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Bonds shall be deposited on receipt by the Issuer in the Bank, in a special account hereby created and designated "Town of Tunnelton Project Construction Account". The moneys in the Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Bank by securities or in a manner lawful for the securing of deposits of state and municipal funds under West Virginia law. Moneys in the Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Construction Account and pay to the Purchaser on or before the due date thereof, such sums as shall be from time to time required to make the monthly installment payments on the Bonds if there are not sufficient Net Revenues to make such monthly payment.

Moneys in the Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

If the Issuer shall determine at any time that all funds on deposit in the Construction Account exceed the estimated disbursements on account of the Project for the ensuing ninety (90) days, the Issuer may invest such excess funds in Government Obligations which shall mature not later than eighteen (18) months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Construction Account.

When construction of the Project has been completed and all costs have been paid or provision for such payment has been made, any balance remaining in the Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.02. Covenants of the Issuer as to Revenues and Funds. As long as any Bond shall be outstanding and unpaid, or until there shall have been set apart in the Series 2002 Bonds Reserve Account hereinafter established or corresponding reserve accounts for subsequent series of Bonds, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of all Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of any and all Bonds as follows:

(A) Revenue Fund. The entire Gross Revenues, and all parts thereof, including without limitation all tap fees received, shall be deposited as collected by the Issuer in the Town of Tunnelton Sewer Revenue Fund which is hereby established with the Bank. The Revenue Fund shall constitute a trust fund for the purposes provided herein and shall be kept separate and apart from all

other funds of the Issuer and used only for the purposes and in the manner provided herein. The holders of the Bonds shall have a lien on and a pledge, hereby granted, of all Net Revenues of the System, as herein provided, and a statutory mortgage lien upon the System, granted and created by the Act, as long as the Bonds remain unpaid.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first each month transfer from the Revenue Fund and pay into the Town of Tunnelton Operation and Maintenance Fund, which is hereby established with the Bank, such sum as the Issuer may determine, in accordance with its budget, to be necessary to pay all current Operating Expenses.

(2) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and pay to the National Finance Office designated in the Original Bonds the amount required to pay the interest on the Original Bonds, and to amortize the principal of the Original Bonds over the term of the Bond as provided in the Bond.

(3) The Issuer shall next, by the fifteenth day of each month beginning with and including the month in which the first principal installment is due upon the Original Bonds, transfer from the Revenue Fund and deposit in the Series 2002 Bonds Reserve Account, which is hereby established with the West Virginia Municipal Bond Commission, one-twelfth of one-tenth of the Series 2002 Bonds Reserve Requirement until the amount in the Series 2002 Bonds Reserve Account is equal to the Series 2002 Bonds Reserve Requirement. After the Series 2002 Bonds Reserve Requirement has been accumulated in the Series 2002 Bonds Reserve Account, the Issuer shall deposit monthly into the Series 2002 Bonds Reserve Account, such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bonds and for payment of Operating Expenses of the System, as shall be required to maintain the Series 2002 Bonds Reserve Requirement. Moneys in the Series 2002 Bonds Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Original Bonds as the same shall become due, for prepayment of installments on the Original Bonds or for mandatory prepayment of the Original Bonds as provided herein, and for no other purpose.

(4) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund which is hereby established with said Bank moneys remaining in the Revenue Fund and not permitted to be retained therein, until there has been accumulated in the Repair and Replacement Fund the aggregate sum of \$25,000 and thereafter such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies for monthly payments of installments on the Bonds as the same become due, and next to restore to the Series 2002 Bonds Reserve Account any sum or sums transferred therefrom. Thereafter, and provided that payments into the Series 2002 Bonds Reserve Account are current and in accordance with the foregoing provisions, moneys in the Repair and Replacement Fund may be withdrawn by the Issuer and used

for extraordinary repairs and for replacements of equipment and improvements for the System, or any part thereof, and for capital additions and improvements for the System.

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

Whenever the money in the Series 2002 Bonds Reserve Account shall be sufficient to prepay the Original Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Original Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Bank (and any successor appointed by the Issuer) is hereby designated as Fiscal Agent for the administration of the Repair and Replacement Fund as herein provided and the West Virginia Municipal Bond Commission (and any successor appointed by the Issuer) is hereby designated as Fiscal Agent for the administration of the Series 2002 Bonds Reserve Account as herein provided, and all amounts required therefor will be deposited by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

All the funds provided for in this Section shall constitute trust funds and shall be used solely for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Original Bonds and the interest thereon. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of state and municipal funds under the laws of the State of West Virginia. The Bank and the West Virginia Municipal Bond Commission shall not be a trustee as to such funds.

If on any payment date the revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Fiscal Agents shall keep the moneys in the Series 2002 Bonds Reserve Account and the Repair and Replacement Fund, respectively, invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America. Earnings upon moneys in the Series 2002 Bonds Reserve Account, as long as the Series 2002 Bonds Reserve Requirement is on deposit and maintained therein, shall be paid annually in January to the Issuer by the West Virginia Municipal Bond Commission and deposited by the Issuer upon receipt into the Revenue Fund.

(C) Change of Fiscal Agents. The Issuer may designate another bank insured by FDIC as Fiscal Agent for the administration of the Repair and Replacement Fund if the Bank should

cease for any reason to serve or if the Governing Body determines by resolution that the Bank or its successor should no longer serve as Fiscal Agent for the Repair and Replacement Fund. The Issuer may designate a bank insured by FDIC as Fiscal Agent for the administration of the Series 2002 Bonds Reserve Account if the West Virginia Municipal Bond Commission should cease for any reason to serve or if the Governing Body determines by resolution and with the written consent of the Purchaser that the West Virginia Municipal Bond Commission or its successor should no longer serve as Fiscal Agent for the Series 2002 Bonds Reserve Account. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

(D) User Contracts. The Issuer hereby certifies that there will be not less than 151 bona fide users serviced by the System.

ARTICLE V

GENERAL COVENANTS

Section 5.01. General Statement. As long as any Bond shall be outstanding and unpaid, or until there shall have been set apart in the Series 2002 Bonds Reserve Account or corresponding reserve accounts for subsequent series of Bonds, a sum sufficient to prepay the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Until the payment in full of the principal of and interest on the Notes when due, and to the extent they do not materially adversely affect the holders of the Bonds, the covenants, agreements and provisions contained herein shall, where applicable, also inure to the benefit of the holders of the Notes and any trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by any such trustee or any holder or holders of the Notes; provided, that Section 5.04 shall not be applied to the Notes.

Section 5.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Ordinance. No holder or holders of any Bonds or Notes shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 5.03. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds and to make the payments required herein into the Series 2002 Bonds Reserve Account, the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year, and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 5.04. Statutory Mortgage. For the further protection of the holder of the Original 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 and shall take effect immediately upon delivery of the Original Bonds for the benefit of the holder of the Original Bonds.

Section 5.05. Authorizations, Interim Financing. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and

operation of the Project and issuance of the Original Bonds and the Notes, if issued, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which shall have been waived or shall have expired. The Notes, if issued, will not be payable from the Net Revenues, but shall be payable from Bond proceeds, grant receipts, surplus revenues and proceeds from a letter of credit, if any, all as shall be set forth in the Credit Agreement.

Section 5.06. Investments. The Issuer shall invest and reinvest, and hereby instructs the Bank to invest and reinvest, in Qualified Investments any moneys held as part of the funds and accounts created by this Ordinance, other than the Revenue Fund, to the fullest extent possible subject to applicable laws and this Ordinance, and the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 5.06. The Issuer may direct the Bank in writing as to what particular permitted investments shall be made.

Except as provided herein and in the indenture, if any, any investment shall be held in and at all times be deemed a part of the fund or account in which the moneys and investments are held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the corresponding fund or account. The Bank 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 any loss on such liquidation. The Issuer may invest funds on deposit with the Bank through the trust department of the Bank. The Bank shall not be responsible for any losses from such investments, except losses due to its own gross negligence or willful misconduct.

Section 5.07. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division 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 5.08. Completion of Project and Operation and Maintenance of System. The Issuer will complete the Project as promptly as reasonably possible and will operate and maintain the System in good condition.

Section 5.09. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as any of the Originals Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.10. Issuance of Additional Parity Bonds or Obligations. No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recording Officer a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

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

No additional bonds or other obligations payable out of the revenues of the System which are senior in any way to or on a parity with the Original Bonds shall be issued after the issuance of the Original Bonds pursuant hereto except with the prior written consent of the Purchaser.

Section 5.11. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Original Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon 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 structures of the System in an amount equal to the actual cost 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 \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Original Bonds.

(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 at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workers' Compensation Coverage for all Employees of the Issuer 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 prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with the West Virginia Code § 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds in the custody of any such person at any one time, and initially in the amount of \$10,000 upon the Recording Officer, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

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

Section 5.12. Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) Failure to make payment of any monthly amortization installment at the date specified for payment thereof;

(b) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bonds or herein, or violation of or failure to observe any provision of any pertinent law.

Section 5.13. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The Receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the Court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 5.14. Fiscal Year; Budget. While any Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.15. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser.

Section 5.16. No Competition. To the extent allowable by law, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 5.17. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the service of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and, if the water system is not owned by the Issuer, then the Issuer shall enter into a termination agreement with the water provider and the Issuer shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 5.18. Wetlands Covenant. The Issuer shall not use any Bond proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to comply with this covenant shall constitute an Event of Default under Section 5.12(b) of this Resolution.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. The schedule of rates and charges for the services and facilities of the System initially shall be those contained in the Ordinance enacted by the Council of the Issuer on May 21, 2001, and the adoption of such rates is hereby ratified and affirmed.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Modification or Amendment. No material modification or amendment of this Bond Legislation, or of any Bond Legislation amendatory hereof or supplemental hereto, may be made without the prior consent in writing of the Purchaser.

Section 7.02. Delivery of Bond No. 1. The Mayor is hereby authorized and directed to cause Bond No. 1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.03. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bonds.

Section 7.04. Conflicting Provisions Repealed. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed, but excluding the Loan Resolution (Form FmHA 442-47).

Section 7.05. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

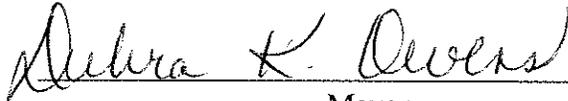
Section 7.06. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation, substantially in the form attached hereto as Exhibit B, which abstract is determined by the governing Body to contain sufficient information as to give notice of the contents hereof, shall be 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 Preston County Journal, a newspaper published and of general circulation in the boundaries of the Issuer, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bond, and that any person interested may appear before the Common Council upon a date certain, not less than ten days subsequent to the first date of the publication of this Bond Legislation and notice, and present protests. At such hearing, all objections and suggestions shall be heard and the Common Council shall take such action as it shall deem proper in the premises.

Section 7.07. Covenant of Due Procedure, etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Bond Legislation 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 and Recording Officer, all members of the Governing Body and the Sanitary Board, were at all times when any actions in connection with this Bond Legislation occurred and are duly in office and duly qualified for such service.

Passed on First Reading March 18, 2002

Passed on Second Reading March 27, 2002

Effective following
public hearing held on April 17, 2002



Mayor

[SEAL]

Attest:

By: 

Recorder

EXHIBIT A

CREDIT AGREEMENT

EXHIBIT B

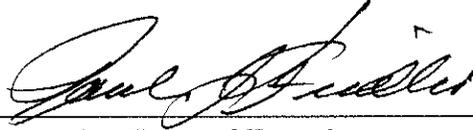
NOTICE OF PUBLIC HEARING

[See Tab No. 10]

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the Town of Tunnelton.

Dated: April 19, 2002.



[SEAL]

Recorder, Town of Tunnelton



Certificate of Publication

LEGAL NOTICE TOWN OF TUNNELTON NOTICE OF PUBLIC HEARING ON SEWER BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a special meeting of the Council of the Town of Tunnelton to be held on Wednesday April 17, 2002, at 9:30 a.m. at the Tunnelton Volunteer Ambulance Service Building, Tunnelton, West Virginia, and at such hearing all objections and suggestions shall be heard by the Council and such Council shall then take such action as it shall deem proper in the premises upon an ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF TUNNELTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF SEWERAGE SYSTEM REVENUE BONDS SERIES 2002, OF THE TOWN OF TUNNELTON IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$290,000; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR A STATUTORY MORTGAGE LIEN; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

The above-entitled Ordinance was adopted by the Council of the Town of Tunnelton upon Petition of the Sanitary Board of the Town on March 28, 2002.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the bond issue contemplated thereby. The bonds are to provide permanent financing of a portion of the cost of acquisition and construction of a sewage collection and treatment system for the Town of Tunnelton (the "System"). The bonds are payable solely from revenues derived by ownership and operation of the System. No taxes may at any time be levied for the payment of the bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the Recorder of the Town of Tunnelton for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to take action to place said Ordinance into effect immediately.

Dated: April 17, 2002.
Paul Fiedler, Recorder
4/3,10

I, **Carol Peters**, the undersigned Advertising Manager of The Preston County Journal, a weekly newspaper of general circulation, published at Kingwood, Preston County, West Virginia, do hereby certify that the notice

Town of Tunnelton

Hearing on Sewer Bond Ordinance

a copy of which notice is hereto annexed, was published in said paper for **two** successive weeks, beginning with its issue of **April 3** and expiring with its issue of **April 10**.

And, I do further certify that on **April 10**

I posted and left posted, a copy of said notice at the front door of the Courthouse of said county.

Carol Peters

ADVERTISING MANAGER

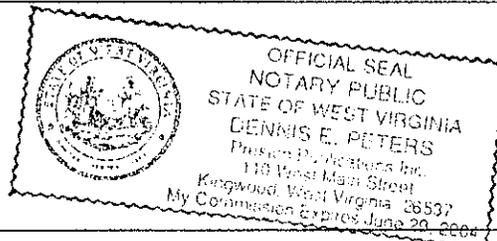
Subscribed and sworn to before me this the

3rd day of April, 2002

Dennis E. Peters

NOTARY PUBLIC

My commission expires 6/29/2004



Kingwood, W.V.

Received of _____

Amount for publishing notice hereto \$ _____

ADVERTISING MANAGER

A CREDIT AGREEMENT WAS NOT REQUIRED FOR THIS TRANSACTION

State of West Virginia

Handwritten notes: "D.W.", "WT", "1/30/01", "D.W.", "WT".

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616

TELEPHONE 304-558-2981

THRASHER ENGINEERING

PERMIT

PROJECT: (Sewage)
New Sewage Collection Facilities
And New Wastewater Treatment Facilities

PERMIT NO.: 14,708

LOCATION: Tunnelton

COUNTY: Preston

DATE: 12-5-2000

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

Town of Tunnelton
Post Office Box 396
Tunnelton, West Virginia 26444

is hereby granted approval to: install approximately 7,200 LF of 6" and 14,380 LF of 8" sewer line; necessary cleanouts and manholes; one (1) 113 G.P.M. duplex submersible sewage pump station, with discharge through approximately 823 LF of 4" force main; one (1) 155 G.P.M. duplex submersible sewage pump station, with discharge through approximately 1,790 LF of 4" force main; one (1) 84 G.P.M. duplex submersible sewage pump station, with discharge through approximately 150 LF of 2" force main and all necessary valves, controls and appurtenances. Also, to construct a new 40,000 G.P.D. wastewater treatment plant to consist of a new office/shop building; influent flow meter; bar screen; flow splitter box; a two (2) cell aerated lagoon (volume= 197,305 gallons) with two (2) 5 HP surface aerators in each cell; a 0.29 acre polishing pond; an algae screen; tablet type chlorination/dechlorination; a cascade aerator (alternate); with piping of effluent discharge to Pringle Run (Latitude 39° 24' 00" - Longitude 79° 43' 42"). The wastewater treatment facilities will be enclosed by a minimum six (6) feet high fence with a locking gate.

Facilities are to serve approximately 194 customers in the Town of Tunnelton.

NOTE: This permit is contingent upon maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum eighteen (18) inches vertical separation between crossing sewer and water lines, with the water line above the sewer line.

The Environmental Engineering Division of the Philippi District Office (telephone 304-457-2296) 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.
William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:cmh

cc: Thrasher Engineering, Inc.
O. Robert Coontz, Division of Environmental Protection
Pravin Sangani, DEP-Office of Water Resources
James W. Ellars, P.E., PSC-Engineering Division
Preston County Health Department
OEHS-EED Philippi District Office

APPROVED

FORM SJ NPDES SEWAGE

DEC 05 2000
Date

Permit No. 14709

Application No. _____

STATE OF WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES
CHARLESTON, WV 25301-2616

STATE OF WEST VIRGINIA
OFFICE OF ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL ENGINEERING DIVISION
CHARLESTON, WV 25301-2616

APPLICATION FOR PERMITS

Please print or type

I. NAME OF FACILITY

Town of Tunnelton

II. FACILITY CONTACT

Owens, Debra, Mayor

(304) 568-2992

A. Name and Title (last, first, & title)

B. Phone (area code)

III. FACILITY MAILING ADDRESS

P. O. Box 396, Bank Street

A. Street or Post Office Box

Tunnelton

WV

26444

B. City or Town

C. State

D. Zip Code

IV. FACILITY LOCATION

Area just east of Tunnelton along County Route 26/33

A. Street Route Number or other specific identifier

Tunnelton

Preston

26444

B. City, Town or nearest Post Office

C. County

D. Zip Code

V. OPERATOR AND OWNERSHIP INFORMATION

Town of Tunnelton

(304) 568-2992

A. Name

B. Phone (area code & number)

C. Is the name listed in Item V-A also the owner? Yes No

Town of Tunnelton, P. O. Box 396, Bank Street, Tunnelton, WV 26444

D. Name and Address of Owner

E. Status of Owner

Federal

State

Private

Public

Other (specify)

VI. APPLICANT REQUEST

- A. In accordance with Chapter 16, Article 1, Section 9, a certificate construct a sewage disposal system or part thereof and;
- B. In accordance with Chapter 20, Article 5A, Section 5, a State NPDES Permit to acquire, construct, install, and operate a sewage disposal system or part thereof for a direct or indirect discharge of sewage, industrial waste, or other waste into the waters of the State.

N/A

VII. EXISTING PERMITS AND APPLICATIONS

Issuing Agency & Address	Type of Permit or Application	No Permit or Application	Effective Date yr/mo/day	Expiration Date yr/mo/

VIII. CERTIFICATION

I certify under penalty of law that this document and all attachments prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. Debra K. Owens, Mayor B. *Debra K. Owens 12-1-01* C.

IX. DESCRIPTION OF DISCHARGE

001

- A. Discharge outlet Number
- B. Plant Outfall
Discharge point name (if any)
- C. Discharge Point
Latitude 39 ° 24 ' 00 " Longitude 79 ° 43 ' 42 "
- D. Pringle Run
Name of receiving stream
- E. Cheat River Monongahela River
tributary of which is tributary of
- F. 2.7 miles
Miles to the mouth of the immediate receiving stream (to the nearest tenth)
- G. Does your discharge contain or is it possible for your discharge to contain one or more of the following substances added as a result of your operations, activities, or processes: ammonia, cyanide, aluminum, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, zinc, phenols, oil and grease, and chlorine (residual).
A. Yes () B. No (X)

X. FACILITY DESCRIPTION

A. Service (mark X)

- | | | | |
|-------------------------|-------|-------------------|-----|
| Municipality | (X) | Shopping Center | () |
| Trailer Court | () | Apartment Complex | () |
| School | () | Subdivision | () |
| Public Service District | () | Other (specify) | () |
| Park | () | | |

B. Number of Persons 450

C. Number of home sites, mobile home sites, etc. 194

D. Total area of site in acres 3.5 Acres

XI. DESCRIPTION OF SEWAGE DISPOSAL SYSTEM

A. Collection System

1. Size of sewer lines	4", 6", 8"
2. Type of sewer lines	PVC SDR 35 + Ductile Iron CL 50
3. Length of sewer lines of each size	4" = 4,740 LF, 6" = 7,200 LF, 8" = 14,380 LF
4. Minimum ground cover on sewer lines	36"
5. Type of sewer joints	Gasketed Slip Joints and Mechanical Joint
6. Number of manholes	131
7. Number of cleanouts	50
8. Number of lift stations	2
9. Size of force mains	4"
10. Length of force mains	2,560 LF of 4"

B. Treatment Plant

1. Type of treatment (mark X)	Complete Mix Aerated Lagoon
a. Extended Aeration ()	b. Stabilization Pond ()
c. Other (specify) (X)	
2. Design flow (gallons per day, GPD)	40,000
3. Type of pretreatment	Manual Bar Screen
4. Aeration pond size	197,305 Gallons
5. Blower size	Four (4) - Five (5) HP Units
6. Clarifier, size and surface area	N/A
7. Polished pond dimensions length x width x depth (at water surface) length x width (at bottom)	See attached WWTP plans for a dra of the polishing pond

8. a. Type of disinfection b. Chlorine contact chamber size (if applicable)	Chlorine tablet feed Sanuril Unit - Model 1000 Dechlorine Tablet Feed Sanuril Unit - Model 1000
9. Stabilization pond dimensions length x width x depth (at water surface) length x width (at bottom)	N/A
10. Post aeration unit size	Cascade Post Aeration
11. Other units and size of units	Chlorine/Dechlor basin size = 12'-8" x 8'-6" x 8'-6" Algae screen structure size = 8 ft. x 7 ft x 5 ft.

XII.

DESCRIPTION OF OPERATION AND MAINTENANCE

A. Certified Operation Classification	Class I
B. Frequency of inspection by operator	Daily
C. List various sewage treatment plant operating and wastewater testing equipment	P H Meter Dissolved Oxygen Settleability Chlorine Residual
D. Method of excess sludge disposal	Excess sludge will be removed by pumping and hauled to Kingwood WWTP for further processing
E. Provisions for operations reliability for the plant during period of power failure	Proposed portable emergency generator

XIII.

ADDITIONAL INFORMATION

Item Number	Information
	The Tunnelton sewer project proposes to install a standard
	gravity collection system within and outside the Town limits
	The system will consist of two (2) sanitary sewer lift stati
	and a 40,000 gpd complete mix aeration lagoon WWTP (with
	future expansion).
	Lift Station #1: 113 GPM @ 32' TDH
	Lift Station #2: 155 GPM @ 53' TDH

XIV. REQUIRED INFORMATION TO ACCOMPANY APPLICATION

- A. US Geological Survey Topographic Map showing property lines, point discharge and downstream water intake or impoundment, if any.
- B. Site plan of the facility showing:
1. Layout with dimensions and property lines.
 2. Home sites, mobile home sites, camping trailer sites, schools, or other buildings.
 3. Location of and distances to known water intakes or wells.
 4. Location of existing or proposed water lines.
 5. Sewage treatment unit (s).
 6. Layout and size of sewer lines, manholes, and/or cleanouts and location of lift stations.
 7. Distance (s) of sewage treatment plant, stabilization pond and polishing pond from surrounding residences or other buildings.
 8. Point of discharge of effluent in stream: List mile point.
 9. Effluent routing details including sample point and protection from erosion at discharge.
 10. Fence, wall, or building around sewage treatment facilities.
 11. Access road to treatment facilities.
 12. Landscaping for the prevention of surface water entering plant, and prevention of erosion from site.
- C. Profile of sewer lines showing:
1. Existing and finished ground level.
 2. Manhole locations with invert and top elevations.
 3. Grade of proposed sewer lines.
 4. Size, length, and type of proposed sewer lines.
 5. Any other items in collection system including lift stations, siphons, force mains with air relief valves, grease traps, sand traps, etc. with proper detailing and elevations.
 6. Waterline crossings.
- D. Report and Specifications setting forth:
1. General description of project and location.
 2. Number of units served and possible expansion of facility.
 3. Type of pipe and joints.
 4. Specifications for lift stations, if any.
 5. Specifications for sewage treatment plant.
 6. Hydraulic calculations.
 7. Soil characteristics of site for a stabilization pond or polishing pond. Report from US Department of Agriculture Soil Conservation Service required.
 8. Manhole details.
 9. Filter details, if any, including type of origin of filter material or sand uniformity coefficient, effective size, and percent passing a number 200 sieve. N/A
 10. Sewer riser details (mobile home park). N/A
 11. Discharge Load Allocation (Form WRD-MUN 1-81).
 12. Test Equipment.
 13. Aerated sludge holding tank (if required). N/A
 14. 10, 25, and 100 year flood elevations.

15. Post aeration.
16. Size of sewage treatment plant, lift station, stabilization pond.
17. Non-potable water for cleaning (if applicable).
18. Provision for outlet marker.
19. Surge equalization tank (if required).
20. Method of flow measurement (weir, flow meter, etc.)
21. Cathodic protection (if any steel units).
22. Provision for level installation of plant (pad or base).
23. Provision for protection from freezing (other than buried plant).

E. Plans of sewage treatment plant, lift station (s), stabilization pond, filter, or polishing pond to be installed. X

F. Documentation consisting of:

1. Legal document stating who shall have responsibility maintenance of sewage treatment facility X
 - a. Owner and/or developer X
 - b. Private utility approved by Public Service Commission X
 - c. Property owners association N
 - d. Existing public or private utility: ie. municipality, public service district, etc. X
2. Legal document (s) granting permission to cross lands of adjacent property owners with sewage transmission lines or effluent discharge lines (if applicable). X



COPY

Bob Wise, Governor *A Vision Shared*

WEST VIRGINIA DEVELOPMENT OFFICE
www.wvdo.org

1900 Kanawha Boulevard, East
Charleston, WV 25305-0311
304-558-2234

June 14, 2001

The Honorable Debra Owens
Mayor
Town of Tunnelton
Post Office Box 396
Tunnelton, West Virginia 26444

**RE: Small Cities Block Grant
Town of Tunnelton—Sewer Improvements Project No.: 99SCBG0052
Budget Amendment Request #2**

Dear Mayor Owens:

Thank you for your February 14, 2001, letter requesting Budget Amendment #2. The town of Tunnelton is requesting an amendment to add \$76,000 to the original grant award of \$1,191,000. Governor Wise approved an award of \$76,000 on June 7, 2001, to assist with additional costs associated with this project. The budget amendment will be used for construction.

The proposed budget amendment is as follows:

	<u>Original</u>	<u>Change</u>	<u>Revised</u>
Administration	\$ 50,000.00	\$ 0.00	\$ 50,000.00
Construction	1,106,000.00	+76,000.00	1,182,000.00
Land Acquisition	25,000.00	0.00	25,000.00
Legal	<u>10,000.00</u>	<u>0.00</u>	<u>10,000.00</u>
Total	\$1,191,000.00	+\$76,000.00	\$1,267,000.00

Your budget amendment is approved, contingent upon the receipt of the updates to the application, including updated disclosure forms reflecting this revision. If you have any questions or concerns, please do not hesitate to contact Deanna Hornyak at (304) 558-4010, extension 30, or by email to dhornyak@wvdo.org.

Sincerely,

Tracey Rowan, Manager
Project Development Section
Community Development Division

TR:dhb

cc: Region VI PDC



COPY

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

CECIL H. UNDERWOOD
GOVERNOR

November 8, 1999

The Honorable Debra Owens
Mayor
Town of Tunnelton
Post Office Box 396
Tunnelton, West Virginia 26444-0396

Dear Mayor Owens:

Thank you for your application to the Small Cities Block Grant program.

Your request has been approved in the amount of \$1,191,000. These funds will enable you to construct a sanitary sewer collection and treatment system to serve the residents of Tunnelton and a portion of Preston County.

The West Virginia Development Office, Community Development staff, will contact you to complete the necessary contract in order to proceed with your project.

The West Virginia Development Office reserves the right to withdraw these funds if your project does not proceed on schedule. These funds would be replaced with a letter of intent for consideration from future allocations.

I am pleased to assist with these improvements for the town of Tunnelton.

Very sincerely,

Cecil H. Underwood

CHU:an

**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2001
\$290,000**

ENGINEER'S CERTIFICATE

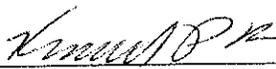
I, Kenneth P. Moran, Registered Professional Engineer, West Virginia Registration No. 11309, of Thrasher Engineering, Inc., Consulting Engineers, Clarksburg, West Virginia, hereby certify that my firm is engineer for the construction of a sewerage system, (herein called the "Project") for the Town of Tunnelton, West Virginia to be constructed in Preston County, West Virginia, which construction is being financed in part by the above-captioned Revenue Bond of the District.

I further certify that the Project will, to the best of my knowledge, be constructed in accordance with plans and specifications prepared by my firm and that such system is situate wholly or chiefly within the boundaries of said Town.

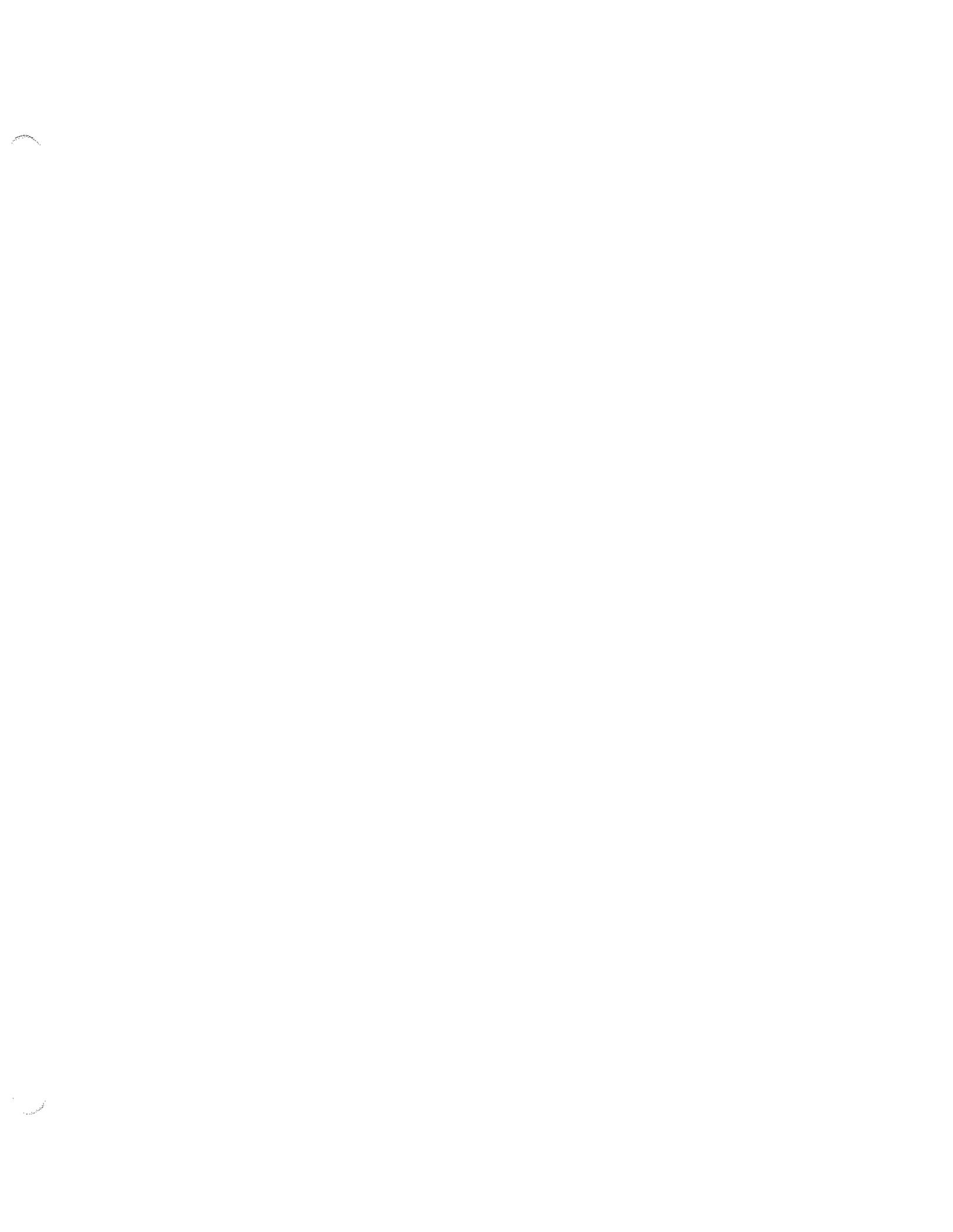
I further certify that the Project is adequate for the purpose for which it was designed and that all necessary governmental approvals and permits for the construction thereof have been obtained or can be obtained.

WITNESS my signature on this 19th day of April, 2002.

THRASHER ENGINEERING, INC.

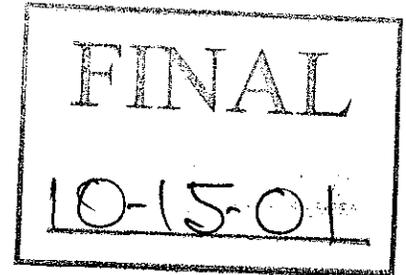
By: 





PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: September 25, 2001



CASE NO. 01-0421-S-CN

TOWN OF TUNNELTON,
a municipal utility.

Application for a certificate of
convenience and necessity to construct
a wastewater treatment plant and to
provide sewer services to customers in
Tunnelton, Preston County.

RECOMMENDED DECISION

On March 28, 2001, the Town of Tunnelton (Applicant or Town) filed an application, duly verified, for a certificate to install approximately 7,200 linear feet of 6" sewer line; 14,380 linear feet of 8" sewer line; cleanouts and manholes; and 84 G.P.M., 113 G.P.M. and 155 G.P.M. submersible sewage pumps; and to construct a 40,000 G.P.D. wastewater treatment plant and aerated lagoon in Preston County. The Town estimates that the total cost of the project will not exceed \$2,680,000. The project is to be financed by a Small Cities Development Grant in the amount of \$1,250,000; a Rural Utilities Service Grant in the amount of \$1,140,000; and a Rural Utilities Service Loan in the amount of \$290,000. The Town proposed sewer rates and charges and submitted, along with its application, the D.E.P. permit, other permits, a funding letter and its Rule 42 financial report on the project.

By Order entered March 28, 2001, the Town of Tunnelton was directed to give notice of the filing of the application, pursuant to West Virginia Code §24-2-11, by publishing a copy of the Notice of Filing, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Preston County, making due return to the Commission of proper certification of publication immediately after publication. The Order provided that anyone desiring to make objection to the application must do so, in writing, within thirty (30) days after the publication of the Notice. The Order further provided that, if protests are not received to the application within the thirty-day protest period, the Commission may waive formal hearing and grant the application based upon the evidence submitted with the application and its review thereof.

On April 18, 2001, the Commission issued an Amended Notice of Filing, directing the Town of Tunnelton to publish the amended notice instead of the March 28, 2001 notice.

On July 12, 2001, Staff filed a Further Final Joint Staff Memorandum, correcting two matters in its original Final Internal Memorandum.

On August 21, 2001, the District filed copies of the affidavits of publication, indicating that the Revised Notice of Hearing was published on August 4, 2001, in the Preston County News, and the Amended Notice of Filing was published on July 18, 2001, in the Preston County Journal. No additional letters of protest were received by the Commission following the publications.

The hearing convened as scheduled on August 23, 2001. Richard K. Wehner, Esquire, appeared upon behalf of the District. Ronald E. Robertson, Jr., Esquire, appeared upon behalf of Commission Staff. The District presented as its exhibits the original affidavits of publication of the Revised Notice of Hearing and the Amended Notice of Filing. The transcript of the August 23, 2001 hearing, consisting of 26 pages, including the Reporter's Certificate, was received by the Commission on September 10, 2001.

EVIDENCE

The hearing was called and no persons or corporations requested intervenor status. No individuals wished to make a statement in opposition of the project. (Tr., p. 6). The first person to testify was the Town's Mayor, Debra Owens. The Mayor explained that the Town published its rate ordinance in a newspaper an additional time, pursuant to Staff's request. (Tr., pp. 7-8). Due to feasibility concerns of the project, the Town's Council voted to remove four residences from the project. The lending institution and the project's engineer advised the Town Council that the inclusion of the line to those residences was not economically feasible. The Mayor advised that the four homes being excluded from the project utilize septic systems which have been approved by the Health Department. (Tr., pp. 8-9). The Mayor testified that none of the Protestants were present in the hearing room. She explained that the individuals affected by the exclusion of the extension were provided written notice that they were no longer part of the sewer project. (Tr., pp. 10-11).

The next person to testify was David Watson, an engineer for Thrasher Engineering, Inc. (Tr., p. 11). Mr. Watson explained that it is not economically feasible to extend the Town's sewer line to the four customers who were eliminated from the project. The cost to serve the four customers was estimated to be \$16,000 per customer. (Tr., p. 12).

The first person to testify on behalf of Commission Staff was Ralph Clark, P.E., with the Engineering Division. Mr. Clark confirmed that the Town had obtained its DEP Permit for the project, which includes a treatment plant and lines to serve the customers. (Tr., p. 17). He explained the changes to Staff's original Final Joint Staff Memorandum. Staff believes the project is needed. The WV/NPDES Permit Number is 0105651. The Health Permit Number is 14,708. (Tr., pp. 18-19; Staff Exhibit No. 1; Staff Exhibit No. 2).

William Nelson, a financial analyst with the Water and Wastewater Division of the Public Service Commission, testified that Staff believes

8. Currently in the Tunnelton area, untreated sewage empties into streams. The Town has been cited by the DEP. Staff believes the project is needed inasmuch as the Town has not previously had access to a public sewer system and the engineering firm has adequately documented the need for the project. (See, Tr., p. 18; Final Joint Staff Memorandum received July 6, 2001; application filed March 28, 2001).

9. Staff believes the project is economically feasible as supported by the funding and the rates enacted by the Town's most recent rate ordinance, subject to bids not exceeding the estimated construction costs. (See, Tr., pp. 20-23; Staff Exhibit No. 1).

10. No persons or corporations appeared at the hearing to protest the application, as amended. (See, Tr., pp. 6, 24).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the Town of Tunnelton to install approximately 7,200 linear feet of 6" sewer line; 14,380 linear feet of 8" sewer line; cleanouts and manholes; and 84 G.P.M., 113 G.P.M. and 155 G.P.M. submersible sewage pumps; and to construct a 40,000 G.P.D. wastewater treatment plant and aerated lagoon in Preston County, as amended by the exclusion of four (4) residences on Plan Sheet No. 18 of Contract 1.

2. The project is adequately financed and economically feasible with the Applicant's current rates and revised project funding, subject to bids coming in at or below the estimated construction costs.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the Town of Tunnelton for a certificate of convenience and necessity to install approximately 7,200 linear feet of 6" sewer line; 14,380 linear feet of 8" sewer line; cleanouts and manholes; and 84 G.P.M., 113 G.P.M. and 155 G.P.M. submersible sewage pumps; and to construct a 40,000 G.P.D. wastewater treatment plant and aerated lagoon in Preston County, as amended by the exclusion of four (4) residences on Plan Sheet No. 18 of Contract 1, be, and hereby is, approved, subject to bids coming in within cost estimates.

IT IS FURTHER ORDERED that the financing of the project, consisting of a Small Cities Development Grant in the amount of \$1,250,000; a Rural Utilities Service Grant in the amount of \$1,140,000; and a Rural Utilities Service Loan in the amount of \$290,000, at an interest rate not to exceed 4.5% for a period not to exceed forty (40) years, be, and hereby is, approved.

IT IS FURTHER ORDERED that, if there is a change in any of the terms, conditions, financing or scope of the proposed project, the Town of Tunnelton shall notify the Public Service Commission and file for Commission approval of the revised project or financing.

**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2002**

GENERAL CERTIFICATE

CERTIFICATE OF:

1. Award of Bond
2. No Litigation
3. Governmental Approvals
4. No Adverse Financial Change; Indebtedness
5. Signatures, etc.
6. Certification of Copies of Documents
7. Incumbency and Official Name
8. Delivery and Payment
9. Land and Rights of Way
10. Meetings, etc.
11. Contractors' Insurance, etc.
12. Connections, etc.
13. Rates
14. Publication and Public Hearing on Bond Ordinance

We, the undersigned Mayor and Recorder of the Town of Tunnelton, Preston County, West Virginia (the "Issuer"), and the undersigned Counsel for the Issuer, hereby certify in connection with the Town of Tunnelton, Sewerage System Revenue Bond, Series 2002, dated on the date hereof, in the principal amount of \$290,000, and bearing interest at the rate of 4.5% per annum (the "Bond"), as follows:

1. Award of Bond: The entire issue of the Bond has been duly awarded to the United States of America, pursuant to a Letter of Conditions from the United States Department of Agriculture, Rural Utilities Service ("RUS"), and as appears in Section 2.02 of the Bond Ordinance authorizing the issuance of the Bond.

2. No Litigation: No controversy or litigation of any nature is now pending, or to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance and delivery of the Bond, nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Bond, nor in any manner affecting the validity or enforceability of the Bond or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the Council or Sanitary Board of the Issuer or the title of the members and officers thereof to their respective offices; nor questioning the construction and acquisition of a sewerage collection and treatment system of the Issuer (the "System"), construction

of which is being financed in part out of the proceeds of the sale of the Bond; nor questioning the rates and charges for the services of the System.

3. Governmental Approvals: All applicable approvals and certificates required by law for construction and operation of the System and issuance of the Bond have been duly and timely obtained and remain in full force and effect.

4. No Adverse Financial Change; Indebtedness: There has been no adverse financial change in the financial condition of the Issuer since the approval by RUS of a loan to assist in construction and acquisition of the System. There are no outstanding obligations of the Issuer which will rank on a parity with the Bond as to liens and source of and security for payment.

5. Signatures, etc.: The undersigned Mayor and Recorder of the Issuer on the date hereof officially executed and sealed the Bond with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and the undersigned Mayor and Recorder are the duly elected, qualified and serving officials as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bond for the Issuer.

6. Certification of Copies of Documents: The copies of the documents listed below, attached hereto or delivered herewith or heretofore are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded or amended or changed in any way unless modification appears from later documents also listed below:

- a. Certificate of Incorporation of the Issuer
- b. Administrative Ordinances of the Issuer
- c. Oaths of Office of the Mayor, Recorder, Treasurer and Council Members of the Issuer
- d. Ordinance Enacted by the Council of the Town on May 21, 2001 Establishing Sewer Rates (the "Rate Ordinance")
- e. Affidavit of Publication of Notice of Public Hearing on the Rate Ordinance
- f. Ordinance Creating the Sanitary Board of the Issuer
- g. Petition of the Sanitary Board
- h. Minutes of Meetings of the Town Council on March 18, 2002, March 27, 2002 and April 17, 2002 regarding enactment of Bond Ordinance
- i. Bond Ordinance
- j. Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing on Bond Ordinance
- k. NPDES Permit
- l. United States Department of Housing and Urban Development Small Cities Block Grant Award
- m. Recommended Decision of the Public Service Commission of West Virginia Dated September 25, 2001, which became the Final Order of the Commission

on October 15, 2001, granting the Certificate of Convenience and Necessity to the Town for the sewerage system

7. Incumbency and Official Name: The proper corporate title of the Issuer is "Town of Tunnelton" and it is a municipal corporation of the State of West Virginia in Preston County, West Virginia. The governing body of the Issuer is its Council consisting of five members and their respective offices, dates of commencement and termination of current terms of office are as follows:

<u>Office</u>	<u>Name</u>	<u>Date of Commencement of Term</u>	<u>Date of Expiration of Term</u>
Mayor	Debra K. Owens	July 1, 2001	June 30, 2003
Recorder	Paul J. Fiedler	July 2, 2001	June 30, 2003
Treasurer	Debra K. Owens	July 2, 2001	June 30, 2003
Council Member	Mary Butler	March 28, 2002	June 30, 2003
Council Member	Diana Burgess	July 2, 2001	June 30, 2003
Council Member	Rose Wright	July 2, 2001	June 30, 2003
Council Member	Ed Funk	July 2, 2001	June 30, 2003
Council Member	Sharon Parker	July 2, 2001	June 30, 2003

All of the foregoing officers took, subscribed to and filed their oaths of office in accordance with law prior to entering upon their official duties; all of those required to give bonds or undertakings filed such bonds or undertakings at the place and in the manner required by law; all of them have otherwise duly qualified for office and were or are the acting officers for their respective periods above stated; and no proceedings for the removal from office of any such officer have been taken or are pending or threatened.

The duly appointed Counsel for the Issuer is Richard K. Wehner, Esquire, of Kingwood, West Virginia.

8. Delivery and Payment: On the date hereof, Bond No. R-1 was delivered to FmHA at Tunnelton, West Virginia, by the undersigned Mayor, and at the time of such delivery, the Bond had been duly and fully executed and sealed on behalf of the Issuer in accordance with the Bond Ordinance.

At the time of delivery of the Bond, the amount of \$177,300 was received by the undersigned Mayor.

9. Land and Rights of Way: All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the System have been acquired or can and will be acquired by purchase, or if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including

costs of any properties which may have to be acquired by condemnation are, in the opinion of the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bond.

10. Meetings, etc.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the construction, operation and financing of the System were authorized, adopted or enacted at meetings of the Council or Sanitary Board of the Issuer duly and regularly called and held by the Issuer in accordance with all applicable statutes, ordinances, resolutions and regulations, and a quorum of duly elected, qualified and acting members of the Council or Sanitary Board, as the case may be, was present and acting at all times during all such meetings.

11. Contractors' Insurance, etc.: All contractors have been required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions and Commitment of RUS and the Bond Ordinance.

12. Connections, etc.: The Issuer will serve at least 151 bona fide full-time users on the System when it has been completed and is placed in operation, in full compliance with the requirements of RUS.

13. Rates: The Council of the Issuer has duly enacted an Ordinance on May 21, 2001, setting rates and charges for the services of the System. Such Ordinance is presently in full force and effect. A public hearing relating to such rates and charges was held on May 21, 2001, after notice duly given in accordance with all provisions of law. All necessary government approvals have been obtained by the Issuer with respect to such rates and charges.

14. Publication and Public Hearing on Bond Ordinance: Upon adoption of the Bond Ordinance, and abstract thereof, determined by the Council of the Issuer to contain sufficient information as to give notice of the contents thereof, was published once each week for two (2) successive weeks, with not less than six (6) full days between each publication, the first such publication occurring not less than ten (10) before the date stated below for the public hearing, in a newspaper of general circulation in the Town of Tunnelton, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bond described in the Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 17th day of April, 2002, at 9:30 a.m., in the Council Chambers of the Town Hall of the Town of Tunnelton and present protest, and stating that a certified copy of the Bond Ordinance was on file with the Council for review by interested parties during the office hours of the Recorder. At such hearing all objections and suggestions were heard by the Council of the Issuer and there being no public protest, written or oral, the Bond Ordinance became finally adopted, and enacted and effect as of the date of such public hearing, and remains in full force and effect.

WITNESS our signatures and the official corporate seal of TOWN OF TUNNELTON on the 19th day of April, 2002.

[SEAL]

TOWN OF TUNNELTON

By: *Dulra K. Owens*
Its: Mayor

By: *Paul J. Fisher*
Its: Recorder

Richard W. Williams
Counsel

333 West Vine Street, Suite 1200
Lexington, Kentucky 40507
Telephone (859) 225-8700

101 South Queen Street
Martinsburg, West Virginia 25401
Telephone (304) 263-0836

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Morgantown, West Virginia 26505
Telephone (304) 285-2500

Camden P. Siegrist
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Bowles Rice McDavid Graff & Love^{PLLC}

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April 19, 2002

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3 West Piccadilly Street
Winchester, Virginia 22601
Telephone (540) 723-8877

E-mail Address:
csiegris@bowlesrice.com

Town of Tunnelton
P. O. Box 396
Tunnelton, West Virginia 26444

Re: \$290,000 Sewerage System Revenue Bond, Series 2002

Ladies and Gentlemen:

We have examined a record of the proceedings relating to the issue of the Sewerage System Revenue Bond, Series 2002, of the Town of Tunnelton, in Preston County, West Virginia (the "Issuer"), dated on the date hereof, bearing interest from the date of delivery at the rate of 4.5% per annum (the "Bond"), represented by a single bond numbered R-1, in the principal amount of \$290,000.

The Bond has been authorized by an Ordinance duly enacted on March 27, 2002, and placed into effect following a public hearing held on April 17, 2002, by the Common Council, which is the governing body of the Issuer (the "Bond Ordinance").

Interest only on the Bond is payable in monthly installments for the first 24 months after delivery; and thereafter, principal of and interest on the Bond are payable in monthly installments of \$1,332.00 to and including the 480th month after the date of the Bond, the final installment to be in the sum of the unpaid principal and interest due on the date thereof.

Principal installments on the Bond are subject to payment in advance as provided therein and in the Bond Ordinance.

The Bond Ordinance and the Bond provide that the issue is for the purpose of financing a portion of the costs of construction of a sewerage collection and treatment system for the Issuer (herein called the "System").

Bowles Rice McDavid Graff & Love^{PLLC}

Town of Tunnelton

April 19, 2002

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The Bond has been awarded to the United States of America at par. There are no outstanding obligations of the Issuer which rank on a parity with the Bond as to liens and source of and security for payment.

It is our opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation of the State of West Virginia with full power and authority to construct and maintain the System and issue and sell the Bond, all under the provisions of Chapter 16, Article 13, of the Code of West Virginia of 1931, as amended, (the "Act") and other applicable provisions of law.

2. The Issuer has legally and effectively enacted the Bond Ordinance in connection with the Bond and has sold and delivered the Bond to the United States of America.

3. The Bond is in due and proper form and has been duly executed and delivered, and constitutes a valid and legally enforceable special obligation of the Issuer secured by and payable solely from a first lien on and pledge of the net revenues of the System, all in accordance with the terms of the Bond and the Bond Ordinance.

4. The Bond is not being issued on the basis that the interest thereon is or will be excluded from gross income for federal income tax purposes; therefore, the interest on the Bond is not excluded from gross income for federal income tax purposes. We express no opinion regarding other federal tax consequences arising with respect to the Bond.

5. The Bond and the interest thereon are by statute, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

6. To the best of our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transaction contemplated by that certain Letter of Conditions, dated July 8, 1998, as amended by letter dated February 22, 2001, from the United States Department of Agriculture, Rural Development to the Issuer, the Bond Ordinance, construction or operation of the System or the validity of the Bond or the issuance of the Bond or the collection or pledge of the net revenues of the System therefor or for the Bond.

It is to be understood that the rights of the holders of the Bond and the enforceability of the Bond, the Bond Ordinance and liens and pledges set forth therein may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights

Bowles Rice
McDavid Graff & Love^{PLLC}

Town of Tunnelton
April 19, 2002
Page 3

(to the extent constitutionally applicable) and that the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Sincerely yours,

BOWLES RICE MCDAVID GRAFF & LOVE, PLLC

Bowles Rice McDavid Graff & Love, PLLC

Wehner Law Offices
103 West Court Street
Kingwood, West Virginia 26537

Charles V. Wehner, Esq.
Richard K. Wehner, Esq.
(W. Va., Md., D.C.)

Area Code 304
Telephone 329-1581

April 17, 2002

Town of Tunnelton
P.O. Box 396
Tunnelton, WV 26444

Bowles, Rice, McDavid, Graff & Love, PLLC
600 Quarrier Street
Charleston, WV 25301

Re: \$290,000 Sewerage System Revenue Bond, Series 2002

Ladies and Gentlemen:

I am counsel to the Town of Tunnelton, a municipal corporation and political subdivision of the State of West Virginia, in Preston County (the "Issuer.") As such counsel, I have examined the Bond Ordinance duly enacted by the Issuer on March 27, 2002, and put into effect following a public hearing on April 17, 2002 (the "Local Act,") and other documents, papers, agreements, instruments and certificates relating to the above-captioned Bond of the Issuer (the "Bond.") Terms used in said Local Act and not otherwise defined herein have the same meanings herein.

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

1. The issuer is a duly organized and presently existing municipal corporation of the State of West Virginia with full power and authority to construct and maintain the System and issue and sell the Bond, all under the provisions of Chapter 16, Article 13, of the Code of West Virginia of 1931, as amended (the "Act,") and other applicable provisions of law.

2. The Mayor, Recorder and members of the Council and Sanitary Board of the Issuer have been duly and properly elected and appointed as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

3. The Local Act has been duly enacted by the Issuer and is in full force and effect.

Letter to: Town of Tunnelton

Bowles, Rice, McDavid, Graff & Love, PLLC

April 17, 2002

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4. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transaction contemplated by that certain Letter of Conditions, dated July 8, 1998, as amended by letter dated February 22, 2001, from the United States Department of Agriculture, Rural Development to the Issuer, the Bond Ordinance, construction or operation of the System or the validity of the Bond or the issuance of the Bond or the collection or pledge of the net revenues of the System therefor or for the Bond.

Thank you very much.

Very truly yours,



Richard K. Wehner

RKW/mdt

**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2001**

RECEIPT FOR BOND AND TRANSCRIPT

The undersigned, for the United States Department of Agriculture, hereby certifies as follows:

1. On the 19th day of April, 2002, at Tunnelton, West Virginia, the undersigned received from the Town of Tunnelton, West Virginia (the "Town"), the single Town of Tunnelton, West Virginia Sewerage System Revenue Bond, Series 2002 (the "Bond"), in the principal amount of \$290,000 dated as of the date hereof, bearing interest at the rate of 4.5% per annum, payable in monthly installments as stated in the Bond.
2. At the time of such receipt, the Bond had been executed and sealed by the Mayor and Recorder of the Town.
3. At the time of such receipt, there was paid to the Town the sum of \$177,386.
4. At the time of such receipt, there was also received by the undersigned three sets of Bond transcript documents.

WITNESS my signature on the 19th day of April, 2002.

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

By: Joseph D. Culbreth

Its: Rural Development Specialist
(Title)

**TOWN OF TUNNELTON, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BOND, SERIES 2002**

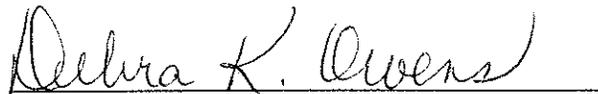
RECEIPT FOR BOND PROCEEDS

The undersigned, for the Town of Tunnelton, Preston County, West Virginia, hereby certifies as follows:

1. On the 19th day of April, 2002, at Tunnelton, West Virginia, the undersigned received from the United States Department of Agriculture \$177,~~306~~ of the proceeds from the single Town of Tunnelton, West Virginia, Sewerage System Revenue Bond, Series 2002 (the "Bond"), in the principal amount of \$290,000 dated as of April 19, 2002, bearing interest at the rate of 4.5% per annum, payable in monthly installments as stated in the Bond.

2. At the time of such receipt, the Bond had been executed and sealed by the Mayor and Recorder of the Town of Tunnelton.

WITNESS my signature on the 19th day of April, 2002.



Mayor,
Town of Tunnelton, West Virginia

SEWERAGE SYSTEM REVENUE BOND, SERIES 2002
THE TOWN OF TUNNELTON

\$290,000

No. R-1

Date: April 19, 2002

THE TOWN OF TUNNELTON (the "Issuer"), for value received, promises to pay to the order of the United States of America (the "Purchaser"), or its registered assigns, at its National Finance Office, St. Louis, Missouri, 63103, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of \$290,000, plus interest on the unpaid principal balance at the rate of four and one-half per cent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Installments of interest only commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof and \$1,332.00, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount hereof is not advanced at the time of closing, the proceeds hereof shall be advanced to Issuer as requested by Issuer and approved by the Purchaser 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 hereon 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. Refunds and extra payments, as defined in the regulations of the Purchaser according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

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

While this Bond is held by an insured lender, prepayments made by Issuer may, at the option of the Purchaser, be remitted by the Purchaser to the Holder promptly or, except for final payment, be retained by the Purchaser and remitted to the Holder on either a calendar

quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Purchaser on an annual installment due date basis, shall be the date of the United States Treasury check by which the Purchaser remits the payment to the Holder. The effective date of any prepayment retained and remitted by the Purchaser to the Holder on an annual installment due date basis shall be the date of the prepayment by Issuer and the Purchaser will pay the interest to which the Holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the Holder.

Any amount advanced or expended by the Purchaser for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Purchaser 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 Issuer to the Purchaser without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Purchaser.

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 rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions and improvements to the sewerage collection and treatment system (the "System") of the Issuer, is payable solely from the Revenues to be derived from the operation of the System after there have been first paid from such Revenues the reasonable current costs of operation and maintenance of the System. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation.

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

This Bond, under the provisions of the Act hereinafter defined, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of

the State of West Virginia, but may only be transferred by transfer of registration hereof with the Recorder of the Issuer.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13 of the Code of West Virginia of 1931 as amended (herein called the "Act") and Ordinance of the Issuer duly enacted on March 27, 2002, and put into effect following a public hearing on April 17, 2002.

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

This Bond is given as evidence of a loan to Issuer made or insured by the Purchaser pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Purchaser and to its future regulations not inconsistent with the express provisions hereof.

THE TOWN OF TUNNELTON

[CORPORATE SEAL]

By Delora K. Owens
Mayor

Attest:

Paul J. Fuller
Recorder

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$177 300	April 19, 2002	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
TOTAL	\$		

(No writing on this Bond except by the Issuer as Registrar)

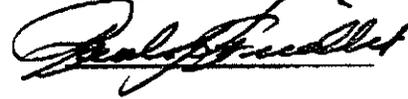
Date of
Registration

April 19, 2002

In Whose Name
Registered

United States of America
Post Office Box 678
Morgantown, West Virginia 26505

Signature of
Recorder or Registrar



ASSIGNMENT

Pay to the Order of

UNITED STATES OF AMERICA

By _____

By: _____
(Title)