

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

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TRANSCRIPT LIST

**\$970,000
City of War, West Virginia
Sewer Revenue Bonds,
Series 1999A
(West Virginia Infrastructure Fund)
and
\$500,000
City of War, West Virginia
Sewer Revenue Bonds,
Series 1999B
(United States Department of Agriculture)**

Closing: June 25, 1999

A. BASIC

1. Grant Agreements
2. Copy of the Order creating the City of War, West Virginia (the "Issuer") and Ordinance creating Sanitary Board.
3. Oaths of office of members of City Council and Sanitary Board of the Issuer.
4. Petition of Sanitary Board to City Council Authorizing Issuance of Bonds.
5. Certified Copy of Bond Ordinance of the Issuer effective on April 19, 1999 and Resolution effective on May 24, 1999.
6. Minutes of Meetings of City Council on First, Second and Third Reading and Public Hearing with respect to Ordinance.
7. Notice of Public Hearing on Bond Ordinance and Affidavit of Publication.
8. Loan Agreement among West Virginia Water Development Authority, West Virginia Infrastructure and Jobs Development Council and the Issuer.
9. Copy of Sewage Treatment Ordinance.

B. CERTIFICATES AND RECEIPTS

10. General Certificate signed by the Mayor, Recorder and Attorney of the Issuer.

11. Non-Arbitrage Certificate
12. Certificate of Consulting Engineer.
13. Certificate of Certified Public Accountant.
14. Certificate of Recorder as to Truth and Accuracy of Documents Delivered.
15. NPDES Permit (cover page).
16. Registrar's Agreement between the Issuer and Registrar.
17. Acceptance of Duties of Depository Bank.
18. Acceptance of Duties of Registrar.
19. Request and Authorization as to Authentication and Delivery of the Series 1999A Bond.
20. Certificate of Registration of Bonds.
21. Bond Registry Form.
22. Cross-Receipt for Bonds and Bond Proceeds.
23. Notice of Delivery of Series 1999A Bond.
24. Financing Statements.
25. Form 8038-G and evidence of filing thereof.

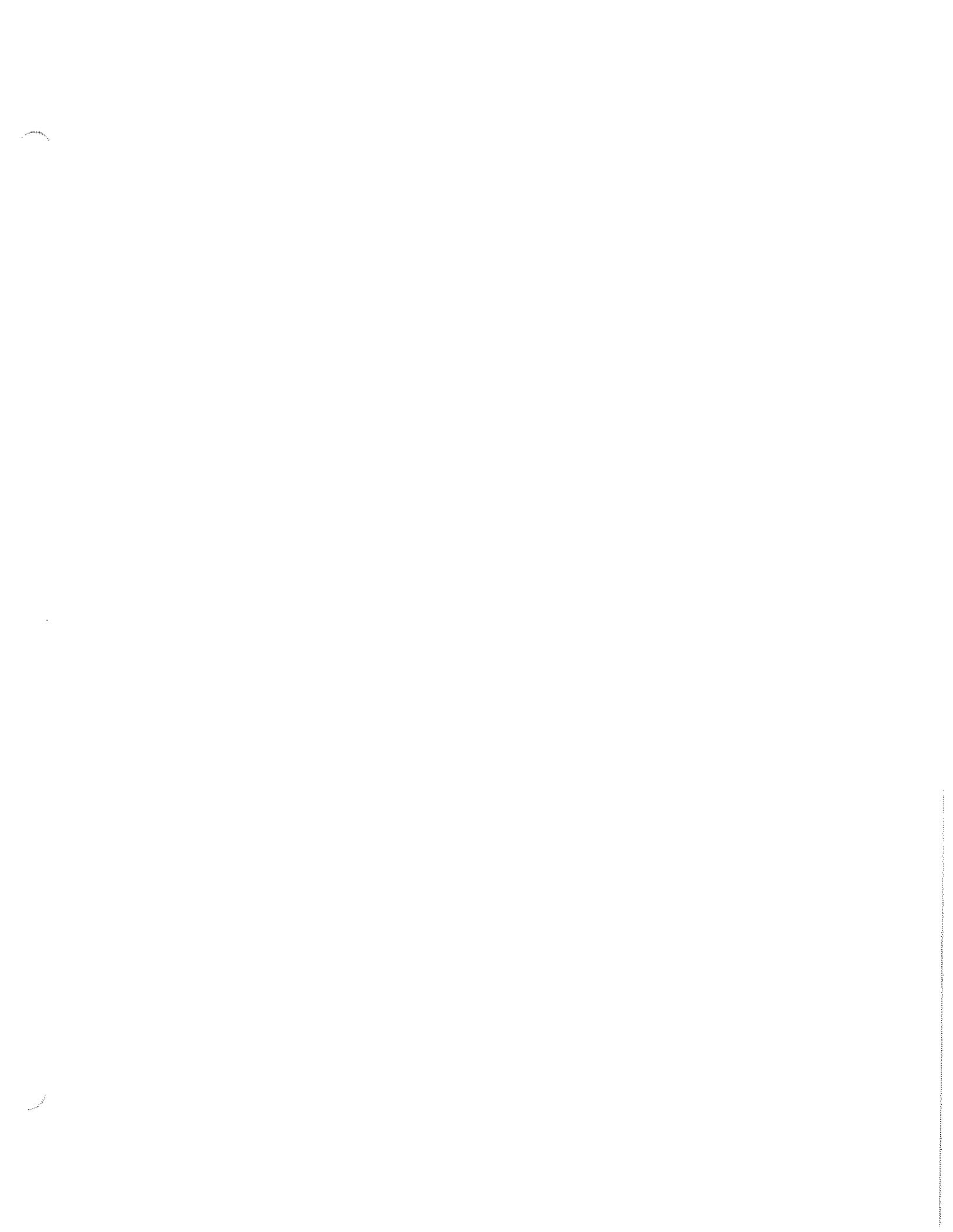
C. LEGAL OPINIONS

26. Opinion of Goodwin & Goodwin, LLP, Bond Counsel, on Series 1999A Bonds.
27. Opinion of Goodwin & Goodwin, LLP, Bond Counsel, on Series 1999B Bonds.
28. Non-Arbitrage Opinion of Goodwin & Goodwin, LLP on Series 1999B Bonds.
29. Opinion of William S. Winfrey, II, Counsel to the Issuer.
30. Opinion of William S. Winfrey, II, Counsel to the Issuer, as to Title to Property.

D. MISCELLANEOUS

31. Municipal Bond Commission New Issue Report Form.
32. Public Service Commission Certificate of Convenience and Necessity and Supplemental Order.
33. West Virginia Infrastructure and Jobs Development Council approval letter.
34. Specimen Bonds.
35. Copy of Statutory Authority.

The closing of the sale of \$970,000 in aggregate principal amounts of City of War, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and \$500,000 City of War, Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture), will take place at the office of the West Virginia Water Development Authority, 180 Association Drive, Charleston, West Virginia, at 10:00 a.m., Eastern Time, on June 25, 1999. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document which references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.



(August 1996)

GRANT AGREEMENT

This Grant Agreement entered into between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the **CITY OF WAR** (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$3,200,000 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understanding and agreements with regard to the Grant.

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

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.
2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.
3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.
4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.
5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.
6. The Governmental Agency acknowledges that the Grant may be reduced, from time

to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant available due to bid/construction/project underruns.

8. This Agreement shall be governed by the laws of the State of West Virginia.

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

CITY OF WAR

By: Thomas C. Hatcher
Mayor

Date: June 25, 1999

SEAL

ATTEST

Peggy Weil
Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: Daniel B. Gorkushy
Director

Date: June 25, 1999

SEAL

ATTEST

Barbara B. Meadows
Secretary - Treasurer

EXHIBIT A

The project consists of a 0.20 MGD wastewater treatment facility and gravity collection system at a total project cost of approximately \$8,940,000.

WATER OR WASTE SYSTEM GRANT AGREEMENT

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL UTILITIES SERVICE

THIS AGREEMENT dated May 24, 1999 between

City of War

a public corporation organized and operating under

Chapter 16, Article 13, West Virginia Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of \$ 8,940,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 5,990,000.00 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 5,990,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 2,950,000.00 or 75% percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed 33.0% percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service. ~~Adopted by Resolution No. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

* as approved by the West Virginia Public Service Commission

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

All that property included in city of War sanitary Sewerage Treatment and Collection system including all land and rights-of-way associated therewith.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds, for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).
N/A

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:
[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.
2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.
[Revision 1, 11/20/97]
3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 2,950,000.00 which it will advance to Grantee to meet not to exceed 33.0% percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor

and attested and its corporate seal affixed by its duly authorized

Manuel Collins, Acting Recorder

Attest:

By Thomas C. Hatcher
Thomas Hatcher
(Title) Mayor

By Manuel Collins
Manuel Collins
(Title) Acting Recorder

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By Rose Mary Christian Rural Development Specialist 6/25/99
Rose Mary Christian (Title)

LAW ORDERS

McDowell Circuit Court, W. Va., February

Term, 191 1920 28th

Day

IN THE MATTER OF THE INCORPORATION OF THE PROPOSED TOWN OF FAR, WEST VIRGINIA.

On this the 18th day of March, 1920, came the parties, the applicants for the incorporation of the territory described in the papers filed herein, in person, and by attorneys, and those opposing such incorporation, in person, and by attorneys, and announced themselves ready for a hearing on the application.

Thereupon, in support of their application, the applicants offered in evidence a survey and map as and for the survey and map of the territory intended to be incorporated, together with the affidavit of J. N. Gildersleeve, as the surveyor who made such survey and map, as to the accuracy thereof, which territory is bounded and described as follows, to-wit:-

BEGINNING at a stake in center of the Jaeger and Southern rail road, a branch line of the Norfolk & Western, opposite mile post No. 22, thence N. 38 05 E. 792 feet to a black pine stump, a corner of the Pocahontas Domestic Coal Company, thence with the same, S. 78 30 E. 567.8 feet to 2 white oaks and white walnut in line of the Rowland Addition, thence with the same two bearings N. 12 48 E. 17 feet to a stake, thence S. 78 14 E. 808 feet to a stake, a corner to the Rowland Addition and land of Pocahontas Domestic Coal Company, thence through said Pocahontas Domestic Coal Company's land, N. 52 05 E. 2470 feet to a stake in land of Pocahontas New River Consolidated Coal Company, thence S. 35 30 E. 590 feet to a stake, thence S. 66 40 E. 945 feet to a stake on John's Branch, thence S. 51 12 W. 3187 feet crossing said railroad and passing through mile post No. 23 to a pine below a cliff and above Far Ridge Coal Company drift mouth, thence S. 79 W. 1458 feet to a stake on a spur above Christian Coal Company drift mouth, thence N. 49 22 W. 1444 feet to 2 spruce pines on the point of a spur, thence N. 33 30 E. 354 feet crossing Dry Fork, passing through Mile Post No. 22 of the Jaeger and Southern Rail Road Company to the BEGINNING. Area 165.61 Acres.

And the applicants also offered in evidence a census of the resident population of such territory, as it was on the 24th day of January, 1920, together with the affidavit of Henry Thompson, the person taking such census, as to the accuracy thereof; also a copy of the notice of such application, as provided for in Section 6 of Chapter 47 of the Code; also the certificate, under oath, returned to the Court by M. K. Murphy, A. C. Rose, and T. H. Wingo, who superintended the taking of the vote upon the question of such incorporation; to the introduction of all which those opposing the application objected, but the Court overruled said objection and permitted the said papers to be introduced in evidence.

5/11/20/3

Thereupon, in further support of their application for such incorporation, the applicants offered in evidence the testimony of the following witnesses, to-wit:- J. W. Johnson; Stanley J. Claremont; Jacob Shore; R. B. Hoke; M. K. Murphy; and A. C. Rose.

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And upon the introduction of such evidence, those opposing the application moved the Court to strike out the said evidence and not consider it, which motion the Court also overruled.

and thereupon those opposing such incorporation introduced in evidence the testimony of the following witnesses, to-wit:- J. D. Nash; Alex Harman; and T. D. Waynard.

opposition

Thereupon, counsel for the applicants moved the Court to enter an order of record, directing the Clerk of this Court to issue a certificate of incorporation of the territory described in the papers filed herein, as provided for by Section 9 of Chapter 47 of the Code, which motion counsel for those opposed to the granting of such certificates resisted, and the Court, after hearing argument of counsel for both parties upon the questions of law and fact arising herein, takes time to consider the same.

IT IS ORDERED THAT COURT BE ADJOURNED UNTIL THURSDAY MORNING NEXT 9 O'CLOCK, APRIL 7, 1920.

H. H. Henshaw JUDGE.

THE COUNTY COMMISSION OF McDOWELL COUNTY, W. VA.

REGULAR Term 11th Day of FEBRUARY 1981

ORDER OF THE ANNEXATION OF THE CITY OF WAR

IN THE COUNTY COMMISSION OF McDOWELL COUNTY, WEST VIRGINIA

ORDER OF ANNEXATION

On the 11th day of February, 1981, there was a hearing in the office of the County Commission of McDowell County, West Virginia, pursuant to the Class II-0 notices published in The Welch Daily News, located in Welch, McDowell County, West Virginia, and in the Industrial News, located in Iaeger, McDowell County, West Virginia, and the five (5) notices prominently posted at not less than five (5) public places within the area proposed to be annexed.

Appearing on behalf of the applicants, was Charles A. Tutwiler, Attorney at Law, and announced to the Commission, that notices of the hearing had been given in compliance as set forth in the Code of West Virginia, and requested that the Commission approve the annexation of the 24.098 acre tract or parcel of land as described in the Application for Annexation by Minor Boundary Adjustment to the City of War, McDowell County, West Virginia. The attorney for the applicants also informed the Commission, that there are sixty-six (66) persons residing in the territory to be annexed, and that the accurate map, attached to the aforesaid application, shows that the 24.098 acre tract or parcel of land is contiguous to the corporate limits of the said City of War. That proper notice has been given by posting notices of this hearing in not less than five (5) public places in the aforesaid 24.098 acre tract or parcel of land, and that there are no freeholders of the area proposed to be annexed who are present or representatives at the hearing who are opposed to the proposed boundary change.

WHEREUPON, the Commission, after ascertaining that there is no opposition by the freeholders or their representatives of the area proposed to be annexed, the Commission doth, therefore, ORDER that the following described tract or parcel of land, lying and being in Big Creek District, McDowell County, West Virginia, and being more particularly bounded and described as follows, to-wit:

BEGINNING at a point located in the center of a bridge located on War Creek and shown and designated on a map entitled "Plat Showing Area to be Annexed by the City of War, McDowell County, West Virginia" dated November 2, 1978, Scale: 1" = 100', prepared by William Allan Aden, C.E. to be forthwith recorded in the Office of the Clerk of the County Commission as Existing Nail and Cap; thence N 90° W 195.99 feet to point; thence N 0° 49' 25" E 115.82 feet to a point; thence N 15° 13' 27" E 299.52 feet to a point; thence N 2° 58' 02" E 139.12 feet to a point; thence N 7° 00' 17" W 83.27 feet to a point; thence N 24° 51' 51" W 367.27 feet to a point; thence N 55° 05' 07" W. 186.99 feet to a point; thence N 50° 04' W 299.58 feet to a point; thence N 28° 37' 09" W 54.74 feet to a point; N 19° 53' 23" W 243.93 feet to a point; N 1° 25' 27" E 140.00 feet to a point; thence N 27° 30' 33" W 329.47 feet to

MINUTE BOOK No. 60

THE COUNTY COMMISSION OF McDOWELL COUNTY, W. VA.

FEBRUARY Term 11th Day of FEBRUARY 19 81

a point; thence N 17° 13' 13" W 999.89 feet to a point; thence N 20° 01' 58" W 307.14 feet to a point; thence with curve to the right with a radius of 96.73 feet 155.16 feet to a point; thence N 71° 52' 25" E 744.00 feet to a point; thence N 57° 22' 39" E 395.00 feet to a point; thence N 32° 45' 05" E 1,384.59 feet to a point being a 30" White Oak; thence S 70° 58' 08" E. 238.23 feet to a point; thence S 42° 13' 37" W 436.73 feet to a point; thence S 23° 27' 27" W. 631.99 feet to a point; thence S 36° 26' 12" W 257.36 feet to a point; thence S 61° 12' 52" W 437.98 feet to a point; thence S 71° 19' 50" W 235.10 feet to a point; thence with a curve to the left with a radius of 650.00 feet 728.51 feet to a point; thence S 7° 06' 50" W 292.20 feet to a point; thence with a curve to the left with a radius of 321.17 feet 141.66 feet to a point; thence S 18° 09' 28" E 170.61 feet to a point; thence S 15° 04' 33" E 211.94 feet to a point; thence with a curve to the left with a radius of 258.32 feet 75.46 feet to a point; thence S 31° 48' 46" E 316.26 feet to a point; thence S 23° 32' 48" E 314.55 feet to a point; thence S 23° 58' 33" E 277.70 feet to a point; thence S 60° 55' 32" E 107.0 feet to a point; thence S 79° 47' 10" E 112.0 feet to a point; thence S 46° 55' 28" E 101.86 feet to a point; thence S 41° 59' 14" E 80.72 feet to a point; thence with a curve to the right with a radius of 122.18 feet 20.19 feet to a point; thence S 32° 31' 03" E 116.04 feet to a point; thence with a curve to the right with a radius of 249.44 feet 88.17 feet to a point; thence S 12° 15' 53" E 94.15 feet to a point; thence with a curve to the right with a radius of 418.20 feet 62.00 feet to a point; thence S 3° 46' 10" E. 385.80 feet to a point; thence S 1° 06' 39" E 188.85 feet to a point; thence with a curve to the right with a radius of 175.85 feet 63.11 feet to a point; thence S 19° 27' 09" W 78.92 feet to the point of BEGINNING, containing 24.098 acres, more or less.

be annexed by minor boundary adjustment to the City of War, and that the corporate limits of the City of War, shall be changed to include the aforesaid 24.098 acre tract or parcel of land, and that the aforesaid 24.098 acre tract or parcel of land shall be included within the City limits of the City of War, McDowell County, West Virginia.

Dated this 11th day of February, 1981.

Signed:

Robert E. Blair
Robert E. Blair, President

Floyd Jones Mayor 2/11/81

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

HILDA J. TAYLOR, Clerk of the County Commission of McDowell County, do hereby certify that the foregoing is a true and correct copy as taken from the records in my said office, as the same exists therein, in Minute Book Book No. 60, at Page No. 132-133.

Given under my hand and seal at Welch, West Virginia, this the 5th day of March, 19 81.

TESTE: Hilda J. Taylor Clerk
McDowell County Commission

BY: Lillian Ruth Fannin DEPUTY

AN ORDINANCE APPOINTING A SANITARY BOARD TO ACQUIRE, CONSTRUCT, EQUIP, ADMINISTER, OPERATE AND MAINTAIN A SEWAGE COLLECTION, PURIFICATION, TREATMENT AND DISPOSAL SYSTEM OR SYSTEMS WITHIN AND WITHOUT THE CITY OF WAR, TO INVEST IN SUCH BOARD THE CUSTODY, ADMINISTRATION, OPERATION, MAINTENANCE, SUPERVISION AND CONTROL OF SUCH SYSTEM OR SYSTEMS, AND TO FINANCE THE COST OF THE ACQUISITION, CONSTRUCTION AND EXTENSION OF ALL SUCH WORK BY THE ISSUANCE OF REVENUE BONDS, AS PROVIDED BY CHAPTER 16, ARTICLE 13 OF THE CODE OF WEST VIRGINIA.

WHEREAS, the City of War owns, operates and maintains a sewage collection system, sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations and all other appurtenances necessary or useful and convenient for the collection, treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, night soil and industrial waste of the City of War and any sanitary district which may be created; and

WHEREAS, the City of War desires to finance the design, acquisition, construction and extension of such system, works and appurtenances by the issuance of revenue bonds and to provide for the establishment and collection of rates for the use of such works and the service rendered thereby, all as provided by Chapter 16, Article 13 of the Code of West Virginia, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WAR.

Section 1: There is hereby created and appointed a Sanitary Board of the City of War consisting of the Mayor of the City of

War, who shall act as Chairman of said Board, _____,
a resident of the City of War, who shall serve for a term of three
years, and _____, a registered professional engineer,
who shall serve for a term of two years, neither of said members
having been an officer or employee of the City of War within a
period of one year prior to the date of the introduction of this
Ordinance.

Section 2: Upon the expiration of each of the terms of said
appointees, other than the Mayor, and of each succeeding term, a
successor shall be appointed by Council for a full term of three
years, but during the construction period of the works constructed
under the supervision and direction of said Board one member
thereof shall be a registered professional engineer. The Chairman
of the Board shall always be the then Mayor of the City of War and
vacancies to fill unexpired terms shall be filled by Council.

Section 3: The Board shall elect a Vice-Chairman from its
members and shall designate a Secretary and Treasurer (who may be
one and the same person) who need not be a member of the Board and
who shall hold office at the will of the Board.

Each member of the Board, other than the Mayor, shall receive
a salary of _____ Dollars (\$_____) per month, and
shall be entitled to payment for his reasonable expenses incurred
in the performance of his duties.

The Secretary and Treasurer shall be paid such reasonable
compensation for services as from time to time may be fixed by
Council, and the Treasurer shall give bond, with qualified

corporate surety, in the amount of _____ Thousand Dollars (\$__,000,00), or such other amount as Council subsequently may require, conditioned upon the proper application of all moneys received by him as such and for the faithful performance of the duties of his office.

All compensation, and all expenses, incurred by said Board, its officers and employees, shall be paid solely from funds authorized to be collected and received by the Board as provided by said Chapter 16, Article 13 of the Code of West Virginia.

Section 4: The construction, acquisition, improvement, equipment, custody, operation, maintenance and administration of all works for the collection, treatment or disposal of sewage within the City of War and in the sanitary district which shall be acquired, constructed, operated or maintained by said Board, the employment of all engineers, architects, inspectors, superintendents, manager, collectors, attorneys and other employees in the judgment of the Board necessary to the execution of its powers and duties, and the collection of all revenues from the works acquired, constructed, operated or maintained by it, shall be under the supervision and control of the Board.

Section 5: In addition to the authority and powers enumerated herein, the Board created by this Ordinance shall be invested with all other powers and authorities provided for such boards by said Chapter 16, Article 13 of the Code of West Virginia, as amended, or as the same may be amended.

CERTIFICATE

The foregoing Ordinance is certified to be a true and correct copy of an Ordinance approved by the City Council of the City of War and made a part of the Charter of the City of War, West Virginia, and filed and of record in the office of the Recorder of the City of War, West Virginia.

Given under my hand and the official seal of the City of War, West Virginia, this ____ day of _____, 1996.

[SEAL]

Frances Blankenship, Recorder

**WAR CITY COUNCIL
MINUTES OF JULY 8, 1996**

Present: Mayor Miller, Recorder Blankenship, Council Members Campbell, Collins, Hatcher, Stutso, and Walker

1. **Agenda. (Attachment #1)**
2. **Minutes of June 24, 1996. (Attachment #2)** Hatcher moved and Walker seconded a motion to approve the minutes after the deletion of line item number 10--"There was no solution to any of the problems." The motion passed.
3. **Minutes of July 2, 1996. (Attachment #3)** Hatcher moved and Walker seconded a motion to approve the minutes as distributed. The motion passed, with Stutso abstaining.
4. **Bills. (Attachment #4)** Hatcher moved and Collins seconded a motion to approve the payment of the bills upon the availability of money. The motion passed.
5. **June, 1996 Financial Statement.** After discussion, it was decided to approve this at a later date when all bills have been presented.
6. **Police Report. (Attachment #5)** Roger Deel gave the report. Collins moved and Hatcher seconded a motion to approve the report. The motion passed.
7. **Fire Department Report.** Joe Stutso gave the report. Hatcher moved and Walker seconded a motion to approve the report. The motion passed.
8. **Tires.** After a discussion about paying Phillip Falgiani for several tires, it was decided not to do so until a bill from Mr. Falgiani is presented. The Mayor said he has it.
9. **John's Branch Drain Problem.** After discussion, the matter was postponed until Council members have a chance to view the problem.
10. **Citizen Comments.** Bernice Wallace from John's Branch complained about a problem there. She was asked to report license plate numbers to the police and to call 911.
11. **Sanitary Board.** After discussion, Collins moved and Walker seconded a motion to appoint Hatcher, Steve Harman, Mayor Miller, an engineer, and Bill Winfrey to the Sanitary Board. The motion passed. Hatcher abstained.
12. **Sewer Board Ordinance. (Attachment #6)** Hatcher moved and Campbell seconded the first reading of the Ordinance. The motion passed.
13. **Norfolk and Southern Letters.** The Mayor reported a response to the letter to N & S requesting permission to pay the yearly rental fee in monthly installments. Two monthly statements were received.
14. **Region I Planning Council Sewer Bill.** After discussion, Hatcher moved and Collins seconded a motion to approve payment upon receipt of the explanation of each bill. The motion passed.

1 Correspondence. (Attachment #7)

- A. Notice of Department of Environmental Protection Public Hearing on July 25, 1996 at 1:00 p.m.
- B. Letter from Rosalie Brodersen of the Water Resources Board concerning the administrative financial agreement between War and Region I for \$30,000 to administer the Sewer grant monies. Mentioned also was the approval of the design related costs and technical services costs from Draper Aden.
- C. DNR Correspondence. Quarterly reports have been filed according to Blankenship.
- D. Junior Volunteer Fire Fighters. (Attachment #8) Mayor Miller read from an opinion from the Attorney General's Office. Copies were given to each Council member.

Blankenship asked Stutso if he had resigned as Fire Chief. Joe said he is still the Chief.

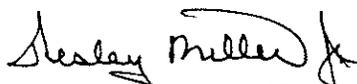
- E. Department of Human Services. The Mayor indicated that he has signed the CWEP contracts.
- F. N & S Bills. This bill should be approved monthly when received.

- 16. Dog in Warriormines. Blankenship indicated that complaints are still coming in about the white dog in Warriormines. It was suggested that the dog warden be called.
- 17. Homecoming--1996. There was discussion about needs--road repairs and need for electricity hook-up. Hatcher agreed to discuss the latter with War Light & Power.
- 18. Complaint Form. After discussion, it was agreed that the Complaint Form and procedure would be used in order to more efficiently deal with citizen complaints.
- 19. Garbage Delinquency Bills. It was agreed that delinquent bills will be sent to each person who is delinquent 4 months or more on garbage and sewer.
- 20. Summer Youth. After discussion, Hatcher indicated that War did not receive approval of a team, according to the Charleston Office responsible, because our application was postmarked five days after the deadline.
- 21. Adjournment. Collins moved and Stutso seconded a motion to adjourn at 9:30 p.m. The motion passed.

CORRECTIONS:

Respectfully submitted,


Frances Blankenship, Recorder


Wesley Miller, Mayor

STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Thomas C. Hatcher, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Mayor of the City of War to which I have been duly elected to the best of my skill and judgment.

Given under my hand this the 1st day of March, 1999.

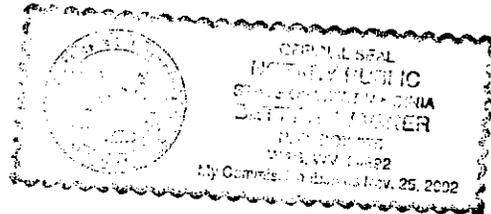
Thomas C. Hatcher
Thomas C. Hatcher

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)

Betty R. Wagner
Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Peggy Deel, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Recorder of the City of War to which I have been duly elected to the best of my skill and judgment.

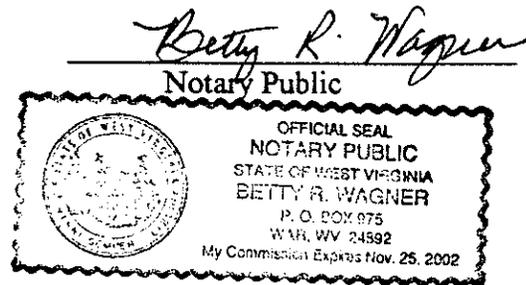
Given under my hand this the 1st day of March, 1999.

Peggy Deel
Peggy Deel

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Manuel Collins, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Acting Recorder of the City of War to which I have been duly appointed to the best of my skill and judgment.

Given under my hand this the 23rd day of June, 1999.

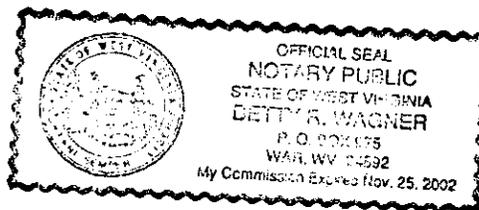
Manuel Collins
Manuel Collins

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002

(SEAL)

Betty R. Wagner
Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Manuel Collins, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman of the City of War to which I have been duly elected to the best of my skill and judgment.

Given under my hand this the 1st day of March, 1999.

Manuel Collins
Manuel Collins

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)

Betty R. Wagner
Notary Public

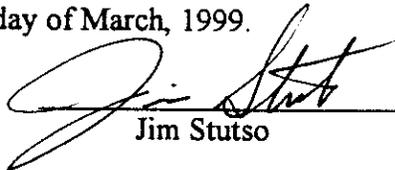


STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Jim Stutso, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman of the City of War to which I have been duly elected to the best of my skill and judgment.

Given under my hand this the 1st day of March, 1999.

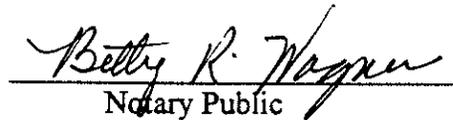


Jim Stutso

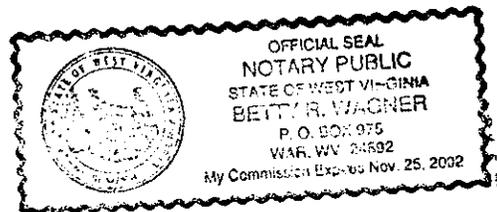
Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)



Notary Public

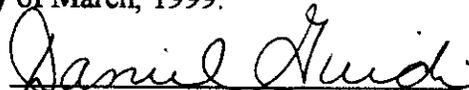


STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Daniel Guidi, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman of the City of War to which I have been duly elected to the best of my skill and judgment.

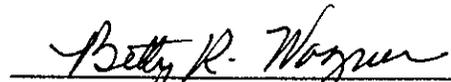
Given under my hand this the 1st day of March, 1999.

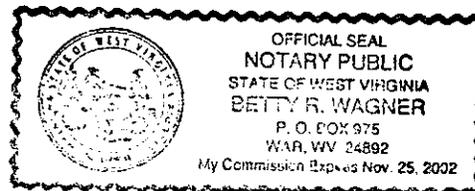

Daniel Guidi

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)


Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Margaret Beavers, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilwoman of the City of War to which I have been duly elected to the best of my skill and judgment.

Given under my hand this the 1st day of March, 1999.

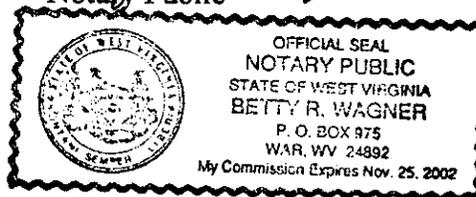
Margaret Beavers
Margaret Beavers

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)

Betty R. Wagner
Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Joe Stutso, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman of the City of War to which I have been duly elected to the best of my skill and judgment.

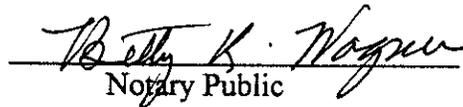
Given under my hand this the 1st day of March, 1999.

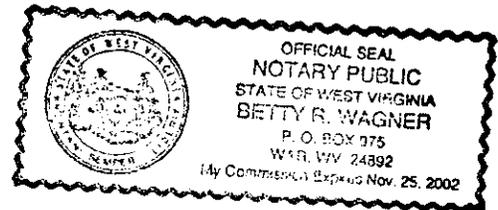

Joe Stutso

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)


Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Thomas C. Hatcher, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Sanitary Board Member of the City of War to which I have been duly appointed to the best of my skill and judgment.

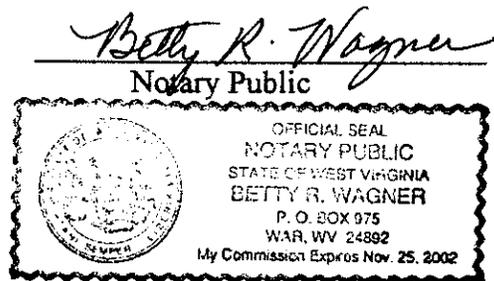
Given under my hand this the 1st day of March, 1999.

Thomas C. Hatcher
Thomas C. Hatcher

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Lonnie Branch, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Sanitary Board Member of the City of War to which I have been duly appointed to the best of my skill and judgment.

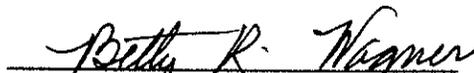
Given under my hand this the 1st day of March, 1999.

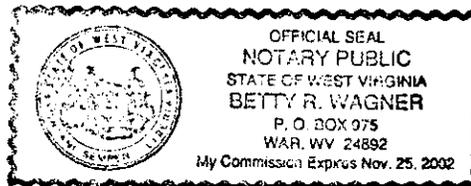

Lonnie Branch

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002.

(SEAL)


Notary Public

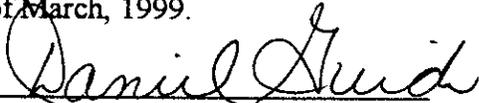


STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Daniel Guidi, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Sanitary Board Member of the City of War to which I have been duly appointed to the best of my skill and judgment.

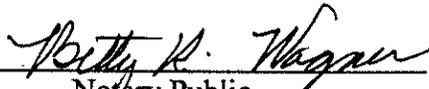
Given under my hand this the 1st day of March, 1999.

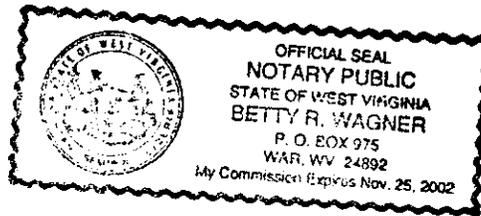

Daniel Guidi

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002

(SEAL)


Notary Public



STATE OF WEST VIRGINIA
COUNTY OF MCDOWELL
CITY OF WAR

OATH OF OFFICE

I, Steve Harmon, do solemnly swear or affirm that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Sanitary Board Member of the City of War to which I have been duly appointed to the best of my skill and judgment.

Given under my hand this the 1st day of March, 1999.

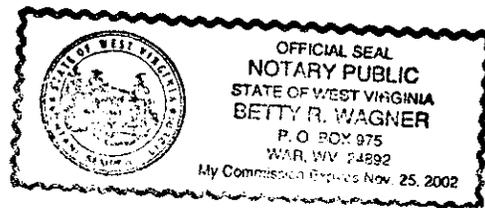

Steve Harmon

Subscribed and sworn before me this 1st day of March, 1999.

My commission expires Nov. 25, 2002

(SEAL)


Notary Public



**PETITION OF THE SANITARY BOARD
OF THE CITY OF WAR, WEST VIRGINIA
PO BOX 280
War, West Virginia 24892
304-875-2841 Phone Fax**

TO THE COUNCIL OF THE CITY OF WAR, WEST VIRGINIA

Pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, the Sanitary Board (the "Sanitary Board") of The City of War, West Virginia (the "City"), hereby petitions the Council to enact an ordinance which shall:

- (a) set forth a brief and general description of the plan for constructions of additions, improvements and betterments to the sewer system of the City in accordance with plans and specifications (the "Project" prepared and filed by Draper Aden Associates (the "Consulting Engineers"), including the report of the Consulting Engineers, a copy of which is filed with the Board and the City;
- (b) set forth the amount needed to pay the costs of the Project which is estimated to be \$7,700,000.00 to pay for the costs of acquiring, constructing and equipping the project;
- (c) order completion of the construction of additions, improvements and betterments to the sewer system of the City as outlined in the Consulting Engineer's report;
- (d) direct that sewer revenue bonds of the City be issued pursuant to Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended (the "Act"), with such bonds to be in the aggregate amounts of \$970,000 and \$500,000 to pay a portion of the costs of constructing the Project and direct that sewer revenue bonds of the City be issued at the earliest possible date pursuant to the Act;
- (e) contain such other provisions as may be necessary in the premises to implement the Project.

This Petition was duly authorized at a meeting of the Sanitary Board duly called and held on the 22nd day of March, 1999.

WITNESS our signatures on this 22nd day of March, 1999.

THE SANITARY BOARD OF THE CITY OF WAR, WEST VIRGINIA

By: Thomas C. Hatcher

By: Steve Harman

By: Daniel Heich

Approved by Sanitary Board of the City of War on March 22, 1999 Thomas C. Hatcher
Mayor

Approved by the War City Council on March 22, 1999 Peggy Deal
Recorder

CITY OF WAR, WEST VIRGINIA

BOND ORDINANCE

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Ordinance") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

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

B. The Issuer desires to have improvements to an existing sewer system constructed. Therefore, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer and surrounding areas that there be constructed additions to the existing wastewater collection

system and treatment facility to serve the Issuer, with provisions to serve the area of Upper Yukon, Yukon and Cavetta in the future. The proposed improvements will consist of approximately 55,000 linear feet of gravity sewer main, 3,500 linear feet of force main, 490 linear feet of highway crossing, 550 linear feet of railroad crossing, 740 linear feet of river/creek crossing, 8 pumping stations, a 0.219 MGD secondary sewage treatment facility, and related property and equipment (the "Project") which constitute properties for the collection and/or transportation, purification and disposal of liquid or solid wastes, sewage or industrial wastes (the existing and proposed sewer facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$7,700,000 to acquire, construct and equip the Project, in accordance with the plans and specifications to be prepared by the Consulting Engineers, which plans and specifications will be filed with the Issuer.

C. The Issuer and the West Virginia Division of Environmental Protection have entered into a Consent Decree in a civil action pending before the Circuit Court of McDowell County, Civil Action No. 93-C-737-S, which provides for the construction of a sewage treatment facility.

D. In accordance with Section 18 of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, the System will be under the supervision and control of the Sanitary Board of the Issuer (the "Board"). The Board has approved and delivered a Petition to the Issuer directing the enactment of this Ordinance and the issuance of the Bonds, as hereinafter defined.

E. The estimated revenues being and to be derived in each year from the Project and the System will be sufficient to pay the costs of said System, the principal of and interest on the Bonds and all sinking funds, reserve accounts and other payments provided for herein and all as such terms are hereinafter defined.

F. The Issuer is the beneficiary of a Small Cities Block grant in the amount of \$1,250,000, a West Virginia Infrastructure and Jobs Development Council ("IJDC") grant in the amount of \$3,000,000, and a United States Department of Agriculture, Rural Utilities Service ("RUS") grant in the amount of \$1,850,000 (collectively, the "Grants"), the proceeds of which, together with the Issuer's contribution of \$130,000, and the proceeds of the Bonds, will be used to acquire, construct and equip the Project.

G. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amounts of \$970,000 and \$500,000, respectively, to finance the cost of the acquisition, construction and equipping of the Project.

H. A portion of the Series 1999A Bond proceeds will be used to redeem that certain City of War, Sewer Revenue Bond, Series 1996, which, as of December 31, 1998, was outstanding in the principal amount of \$439,191.00.

I. The estimated maximum cost of the acquisition, construction and equipping of the Project is \$7,700,000, all of which will be obtained from the sale of the Bonds and from grants to be

made available to the City. The cost of such acquisition, construction and equipping shall be deemed to include but not limited to the cost of preparing drawings, plans and specifications detailing the Project and all attendant expenses; amounts which may be deposited in the Series 1999 Bond Reserve Accounts; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees of RUS, IJDC or the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, and the performance of the things herein required or permitted in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for acquisition, construction and equipping purposes shall be deemed Costs of the Project, as hereinafter defined.

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

K. The Issuer has completed and filed with the Authority and the West Virginia Infrastructure and Jobs Development Council ("IJDC") an Application for a Loan with attachments and exhibits and will file an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), and upon review thereof, the Authority and IJDC have indicated their willingness to lend the Issuer \$970,000 through the purchase of revenue bonds of the Issuer with moneys held in the Fund, hereinafter defined, subject to the Issuer's satisfaction of certain legal and other requirements of the Program, hereinafter defined.

L. The Issuer has received a Letter of Conditions dated December 17, 1997, from the United States Department of Agriculture, Rural Utilities Service ("RUS") with exhibits and attachments (the "Letter of Conditions"), as may be amended, in which RUS has indicated its willingness to lend the Issuer \$500,000 through the purchase of revenue bonds of the Issuer.

M. It is in the best interests of the Issuer that its Series 1999A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement entered into among the Issuer, IJDC and the Authority, and that the Series 1999B Bonds be sold to RUS pursuant to the terms and provisions of the Letter of Conditions issued by RUS to the Issuer, as amended.

N. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and equipping of the Project and issuance of the Bonds, and will comply prior to the issuance of any additional indebtedness, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, if necessary, the time for rehearing and appeal of which will either have expired prior to the issuance of the Bonds or such final order will not be subject to appeal. The Issuer has received the approval of IJDC.

O. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and System, and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(C) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations during the calendar year in which the Bonds for the construction phase are to be issued.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the registered owners of the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1999A Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

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

"Board" means the Sanitary Board of the Issuer, as created and appointed by ordinance enacted by the Governing Body of the Issuer pursuant to the provisions of Section 18 of the Act, and any successor thereto.

"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 Registrar" means the bank or other entity designated herein or in any Supplemental Resolution and its successors and assigns.

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

"Bonds" means the \$970,000 and \$500,000 in aggregate principal amounts of City of War, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture), respectively, issued for the purpose of acquiring, constructing and equipping the Project, and any bonds on a parity therewith authorized to be issued hereunder.

"Closing Date" means the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and including all Regulations promulgated pursuant thereto, and any successors thereto.

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

"Construction Fund" means the Construction Fund established by Section 4.01 hereof.

"Consulting Engineers" means Draper Aden Associates, Blacksburg, Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

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

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

"Governing Body" means the council of the Issuer or other legally constituted governing body of the Issuer, as may hereafter be constituted.

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

"Grant Agreement" means a written commitment for any Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is to be paid to the Issuer.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant.

"Grants" means any grant or grants received by the Issuer in aid of the acquisition and construction of the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof) or any Tap Fees, as hereinafter defined.

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

"IJDC" means the West Virginia Infrastructure and Jobs Development Council, or any other agency of the State of West Virginia that succeeds to the functions of IJDC.

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

"Issuer" means the City of War, in McDowell County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" shall mean the Loan Agreement to be entered into among the Authority, IJDC and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority, the form of which may be approved, and the execution and delivery by the Issuer authorized and directed or ratified herein or by a Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

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

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

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 4.01 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 IJDC or the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent (all as herein defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

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

"Parity Bonds" means additional Bonds issued under the provisions and within the limitation prescribed by Section 6.08 hereof.

"Paying Agent" means the West Virginia Municipal Bond Commission, its successors and assigns, as to the Series 1999A Bonds.

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

"Project" means the acquisition, construction and equipping of certain additions, betterments and improvements for sewer facilities of the Issuer, within or surrounding the City of War and all appurtenant facilities.

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

(a) Government Obligations;

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

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

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

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as Primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase

agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Investment Management Board pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; provided, that investments by such fund on behalf of the Issuer shall be restricted to Qualified Investments other than that described in this paragraph (h); and

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

"Recorder" means the Recorder or Acting Recorder of the Issuer.

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

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 4.01 hereof.

"Revenue" or "System Revenue Fund" means the Revenue or System Revenue Fund established by Section 4.01 hereof.

"RUS" means the United States Department of Agriculture, Rural Utilities Service, and its successors and assigns.

"Series 1999A Bonds" means the \$970,000 City of War, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund).

"Series 1999B Bonds" means the \$500,000 City of War, Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture).

"Series 1999 Bonds Reserve Accounts" means the Series 1999A and Series 1999B Bonds Reserve Accounts established in the Series 1999 Bonds Sinking Funds pursuant to Section 4.02 hereof.

"Series 1999 Bonds Reserve Requirements" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the 1999 Bonds in the then

current or any succeeding year.

"Series 1999 Bonds Sinking Funds" means the Series 1999A and Series 1999B Bonds Sinking Funds established by Section 4.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance.

"Surplus Revenues" means the Net Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds, or any other obligations of the Issuer, including the Renewal and Replacement Fund, and the Series 1999 Bonds Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

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

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

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

ARTICLE II

AUTHORIZATION OF CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Construction of the Project. There is hereby authorized the acquisition, construction and equipping of the Project, at an estimated cost of \$7,700,000 in accordance with plans and specifications to be prepared by the Consulting Engineers and filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article IV hereof. The Issuer has received bids and has entered or will enter into contracts for the acquisition, construction and equipping of the Project, compatible with the financing plan submitted to IJDC and RUS.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of paying for acquisition, construction and equipping of the Project not otherwise provided for and paying certain costs of issuance of the Bonds and related costs, or any other purposes as determined by a Supplemental Resolution, there shall be issued negotiable Bonds of the Issuer, in the aggregate principal amounts of \$970,000 and \$500,000, respectively, for acquisition, construction and equipping of the Project. Said Bonds shall be issued and designated, "Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture)", in the aggregate principal amounts of \$970,000 and \$500,000, respectively, and shall have such terms as set forth hereinafter or in a Supplemental Resolution. The proceeds of the Bonds remaining after funding of the Series 1999 Bonds Reserve Accounts (if funded from Bond proceeds) shall, subject to Section 5.02 hereof, be deposited in or credited to the Construction Fund established by Section 4.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall be registered and numbered AR-1 and BR-1. The Bonds shall bear interest, if any, beginning _____ 1, _____. The Bonds shall bear interest at such rate or rates, not exceeding zero percent (0%) per annum, as to the Series 1999A Bonds, and four and one half percent (4.5%) per annum, as to the Series 1999B Bonds, payable _____; shall mature in forty (40) years; and shall be redeemable in whole or in part, all as prescribed herein. The Bonds shall be payable as to principal and interest, if any, at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by a Supplemental Resolution, the Bonds shall be issued in the form of two single bonds, fully registered to the Authority and to the United States of America, with a debt service schedule attached, representing the aggregate principal amount, and shall mature in principal installments, as provided in said Bonds. The Bonds shall be exchangeable at the option and expense of the Holders for other fully registered Bonds of the same series Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority and the United States of America shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds shall be issued in fully registered form and in denominations and at such interest rates and shall be payable as determined by a new Bond Ordinance.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested

by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

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

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

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

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

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of

Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1999 Bond Reserve Accounts. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds shall be secured by a lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Series 1999 Bond Sinking Fund, the Series 1999 Bond Reserve Account therein and the Renewal and Replacement Fund, hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

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

(FORM OF SERIES 1999A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF WAR
SEWER REVENUE BOND,
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1
\$970,000

Date: April __, 1999

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF WAR, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia in McDowell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the order of the West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of Nine Hundred Seventy Thousand and 00/100 Dollars (\$970,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference, plus interest on the unpaid principal balance hereof at the rate set out below. Interest on this Bond is set at zero percent (0%) per annum. Principal on the Bond is payable in quarterly installments commencing _____ 1, 200_, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of McDowell County National Bank in Welch, Welch, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole at par, but only upon thirty (30) days prior written notice to the Authority and the West Virginia Infrastructure and Jobs Development Council ("IJDC") and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and among the Issuer, the Authority and IJDC.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the public sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The sewer system of

the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is herein called the "System". This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly adopted and enacted by the Issuer and effective _____, 1999 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bond under the Ordinance.

This Bond is payable only from and secured by a parity pledge of the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Series 1999A Bonds Reserve Account created under the Ordinance for the Bonds (the "Series 1999A Bonds Reserve Account") and unexpended proceeds of the Bonds on a parity with the Issuer's Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture) (the "Series 1999B Bonds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1999A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System and to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bonds and the Series 1999B Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bonds, provided however, that so long as there exists in the Series 1999A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds and the Series 1999B Bonds in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

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

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

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

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

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

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

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 1999, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$500,000 (THE "SERIES 1999B BONDS").

IN WITNESS WHEREOF, THE CITY OF WAR has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Bond to be dated _____, 1999.

THE CITY OF WAR, WEST VIRGINIA

[SEAL]

By: _____
Mayor

ATTEST:

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1999A Bond described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 1999

MCDOWELL COUNTY NATIONAL BANK IN WELCH

By: _____
Trust Officer

EXHIBIT A

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 \$ _____			

EXHIBIT B

DEBT SERVICE SCHEDULE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and Transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration of the within Bond of said Issuer with full power of substitution in the premises.

Dated: _____, 20__.

(Assignor)

Witnessed in the presence of:

(FORM OF SERIES 1999B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF WAR
SEWER REVENUE BOND,
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1
\$500,000

Date: April __, 1999

FOR VALUE RECEIVED, THE CITY OF WAR, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia in McDowell County of said State (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government") or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Five Hundred Thousand and 00/100 Dollars (\$500,000), plus interest on the unpaid principal balance at the rate of four and one half percent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Series 1999B Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,295.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Series 1999B 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 of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Series 1999B Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Series 1999B Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Series 1999B Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Series 1999B Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

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

This Series 1999B Bond, together with the Issuer's Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) (the "Series 1999A Bonds") and any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing a portion of the costs of construction of improvements to a sewer system (the "System") of the Issuer, are 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 Series 1999B Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Series 1999B 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 McDowell County National Bank in Welch, Welch, West Virginia, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Bond Ordinance enacted by the Issuer on April 19, 1999, and upon surrender and cancellation of

this Series 1999B Bond. Upon such transfer a new Series 1999B Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Series 1999B Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Series 1999B 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 West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government 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 the Government's request, apply for and accept such loan in sufficient amount to repay the Government,

This Series 1999B Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS SERIES 1999B BOND IS ON A PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THE SEWER REVENUE BOND, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER DESCRIBED IN THE ORDINANCE ISSUED WITH RESPECT TO SUCH SERIES.

The initial address of United States Department of Agriculture-Rural Development for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

This Series 1999B Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

IN WITNESS WHEREOF, the CITY OF WAR has caused this Series 1999B Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, all as of the date hereinabove written.

CITY OF WAR

(SEAL)

By: _____

Mayor
P.O. Box 280
War, WV 24892

ATTEST:

By: _____
Recorder

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: _____

In the presence of:

Section 3.10. Sale of Bonds; Ratification of Execution of Loan Agreement with Authority and IJDC; Acceptance of Letter of Conditions from USDA; Incorporation of Terms. The Series 1999A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement, and the Series 1999B Bonds shall be sold to the United States of America (the "Government"), pursuant to the terms and conditions of the Letter of Conditions. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Letter of Conditions in substantially the forms attached hereto as "Exhibit A" and made a part hereof, with such changes, insertions and omissions as may be approved by the Mayor, the execution of which shall be conclusive evidence of such approval, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to IJDC and the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved. The Loan Agreement, as the same may be amended and/or supplemented, and the terms and provisions thereof are herein incorporated by reference thereto.

Section 3.11. Certificate of Consulting Engineers. Prior to the issuance of the Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement to the effect that the Project will be constructed in accordance with the approved plans and specifications as submitted to IJDC and the Authority, as the case may be, the Project is or will be adequate for the purposes for which it was designed, and the funding plan as submitted to IJDC and the Authority is sufficient to pay the costs of the acquisition and construction of the Project.

Section 3.12. "Amended Schedule A" Filing. Within sixty (60) days following the design and engineering Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the acquisition, construction and equipping of the Project and sources of funds thereof.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created or continued and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Construction Fund.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created or continued with the Commission or the Depository

Section 3.10. Sale of Bonds; Ratification of Execution of Loan Agreement with Authority and IJDC; Acceptance of Letter of Conditions from USDA; Incorporation of Terms. The Series 1999A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement, and the Series 1999B Bonds shall be sold to the United States of America (the "Government"), pursuant to the terms and conditions of the Letter of Conditions. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Letter of Conditions in substantially the forms attached hereto as "Exhibit A" and made a part hereof, with such changes, insertions and omissions as may be approved by the Mayor, the execution of which shall be conclusive evidence of such approval, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to IJDC and the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved. The Loan Agreement, as the same may be amended and/or supplemented, and the terms and provisions thereof are herein incorporated by reference thereto.

Section 3.11. Certificate of Consulting Engineers. Prior to the issuance of the Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement to the effect that the Project will be constructed in accordance with the approved plans and specifications as submitted to IJDC and the Authority, as the case may be, the Project is or will be adequate for the purposes for which it was designed, and the funding plan as submitted to IJDC and the Authority is sufficient to pay the costs of the acquisition and construction of the Project.

Section 3.12. "Amended Schedule A" Filing. Within sixty (60) days following the design and engineering Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the acquisition, construction and equipping of the Project and sources of funds thereof.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created or continued and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Construction Fund.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created or continued with the Commission or the Depository

Bank.

(1) Series 1999A and Series 1999B Bonds Sinking Funds;

(a) Within the Series 1999A and Series 1999B Bonds Sinking Funds, the Series 1999A and Series 1999B Bonds Reserve Accounts.

Section 4.03. System Revenues: Flow of Funds.

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

(1) The Issuer shall first each month transfer from the Revenue Fund to the Operation and Maintenance Fund the amount necessary and sufficient to pay current Operating Expenses.

(2) (a) The Issuer shall, beginning on the date set forth in Exhibit B to the Bonds in order to provide debt service on the Series 1999A Bonds, shall deposit in the Series 1999A Sinking Fund one-third (1/3) of the interest payment next coming due on the Series 1999A Bonds and one-third (1/3) of the principal payment next coming due on the Series 1999A Bonds beginning three (3) months prior to the first date of payment of principal of the Series 1999A Bonds. The Issuer shall submit payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such addresses as are given to the Commission in writing by the Authority. The Issuer shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

(2) (b) The Issuer shall next, each month, on or before the date of payment of each installment on the Series 1999B Bonds, transfer from the Revenue Fund and remit to the National Finance Office designated in the Series 1999B Bond (or such other place as may be provided pursuant to the Series 1999B Bond), the amount required to pay the interest on the Series 1999B Bond, and to amortize the principal of the Series 1999B Bonds over the life of the Series 1999B Bond. All payments with respect to principal of and interest the Series 1999B Bonds shall be made on an equal pro rata basis in accordance with the respective aggregate principal amount thereof outstanding and on a parity with the Series 1999A Bonds. There is hereby created a sinking fund at the Depository Bank into which the Issuer shall deposit sufficient amounts from the Revenue Fund to pay the interest on the Series 1999B Bonds and to amortize the principal of the Series 1999B Bond over the remaining life of the Series 1999B Bond. As long as the Government owns the Series 1999B Bonds, such deposits can be

replaced by the remittances described above.

(3) (a) The Issuer shall next, on the first day of each month, commencing three (3) months prior to the first date of payment of principal of the Series 1999A Bonds, if not fully funded upon issuance of the Series 1999A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit into the Series 1999A Bonds Reserve Account, an amount equal to 1/120 of the Series 1999A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1999A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1999A Bonds Reserve Requirement.

(3) (b) The Issuer shall next, on each date that payment is made as set forth in (2) (b) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Series 1999B Bonds Reserve Account 1/120th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Series 1999B Bonds in any year until the amount in the Series 1999B Bonds Reserve Account equals such maximum amount (the "Series 1999B Bonds Reserve Requirement"). After the Series 1999B Reserve Fund Requirement has been accumulated in the Series 1999B Bonds Reserve Account, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Series 1999B Bonds and for payment of Operating Expenses of the System, as shall be required to maintain the Series 1999B Bonds Reserve Requirement. Moneys in the Series 1999B Bonds Reserve Account shall be used solely to make up any deficiency in monthly payments of the principal of and interest on the Series 1999B Bonds as the same shall become due or for prepayment of installments on the Series 1999B Bonds, or for mandatory prepayment of the Series 1999B Bonds as hereinafter provided, and for no other purpose, on an equal pro rata basis in accordance with the respective aggregate principal amounts thereof outstanding and on a parity with each other.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any reserve account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1999 Bond Reserve Accounts [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof,] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

With respect to the payments made by the Issuer under Section 4.03 (1) through (4) above which relate to the Series 1999A Bonds, the Issuer shall complete the Monthly Payment Form described in the Loan Agreement and submit a copy of said form and the check or checks representing such payments to the Authority by the 5th day of such calendar month.

Moneys in the Series 1999 Bonds Sinking Funds shall be used only for the purposes of paying principal of and interest, if any, as the same shall become due. Moneys in the Series 1999 Bond Reserve Accounts shall be used only for the purpose of paying principal of and interest on the Bonds, as the same shall come due, when other moneys in the attendant Series 1999 Bonds Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1999 Bonds Sinking Funds and Series 1999 Bonds Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective Series of Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 1999 Bonds Reserve Accounts which result in a reduction in the balance of the Series 1999 Bonds Reserve Accounts to below the Series 1999 Bonds Reserve Requirements shall be subsequently restored from the first Net Revenues available after all required payments have been made in full, to the Series 1999 Bonds Sinking Funds for payment of debt service on the Bonds.

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

The Issuer shall not be required to make any further payments into the Series 1999 Bonds Sinking Funds or into the Series 1999 Bonds Reserve Accounts therein when the aggregate amount of funds in said Series 1999 Bonds Sinking Funds and Series 1999 Bonds Reserve Accounts are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Ordinance then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1999 Bonds Sinking Funds created hereunder, and all amounts required for said Series 1999 Bonds Sinking Funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Series 1999 Bonds Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such

payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

Moneys in the Series 1999 Bonds Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 1999 Bonds Sinking Funds, including the Series 1999 Bonds Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Series 1999 Bonds Sinking Funds, including the Series 1999 Bonds Reserve Accounts therein and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Such Surplus Revenues shall be used to redeem the Bonds or for any lawful purposes of the Issuer.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Commission's fees, the Registrar's fees, the Paying Agent's fees and the Depository Bank's charges then due.

E. Ameribank is hereby designated the Depository Bank. The Issuer appoints McDowell County National Bank in Welch as Registrar for the Bonds, and the Commission is hereby designated as Paying Agent for the Series 1999A Bonds.

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

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If requested in writing by the Authority and IJDC, all remittances may be made by electronic transfer or automatic debit.

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

J. Any Tap Fees shall be deposited by the Issuer, as received, in the Construction Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

Section 4.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Bonds not required by the Project in the Series 1999 Bonds Reserve Accounts, or as instructed by the Authority, IJDC and RUS.

ARTICLE V

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 5.01. Application of Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. The amount of the proceeds which together with the earnings thereon shall be at least sufficient to pay capitalized interest on the Bonds shall be deposited in the Series 1999A and Series 1999B Bonds Sinking Funds; provided, that such period may not exceed beyond the date which is six (6) months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Series 1999A and Series 1999B Bonds Reserve Accounts the sums, if any, required hereunder for funding the Series 1999 Bonds Reserve Accounts.

C. The remaining moneys derived from the sale of the Bonds shall be deposited by the Issuer as received from time to time in the Construction Fund established hereunder.

D. The Depository Bank shall act as a trustee and fiduciary for the Bondholders with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in this Ordinance. Moneys in the Construction Fund shall be used solely to pay Costs of the Project and, until so transferred or expended, are hereby pledged as additional security for the Bonds.

Section 5.02. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

On or before the Closing Date, the Issuer shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Series 1999A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 5.01 hereof, disbursements from the Construction Fund shall be made only after submission to, and approval from, the Authority and IJDC of the following:

(1) a completed and signed "Payment Requisition Form," the form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

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

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

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

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

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

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

Until disbursed by the Issuer, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Construction Fund, if any, for application as directed by IJDC.

Section 5.03. Series 1999B Bond Proceeds; Construction Fund. All moneys received from the sale of the Series 1999B Bonds shall be deposited upon receipt by the Issuer in the Depository Bank, a member of Federal Deposit Insurance Corporation (FDIC), in a special account hereby now established and designated as "City of War Sewer System Construction Fund (herein called the "Construction Fund"). The moneys in the Construction Fund in excess of the amount insured by FDIC shall be secured at all times by such 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 Fund shall be expended by the Issuer solely for the purposes provided herein.

Until completion of the construction of the Project, the Issuer will transfer from the Construction Fund and pay to RUS on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Series 1999B Bonds if there are not sufficient Net Revenues to make such monthly payment.

If the Issuer shall determine at any time that all funds on deposit in the Construction Fund exceed the estimated disbursements on account of the Project for the ensuing ninety (90) days, the Issuer may invest such excess funds in Qualified Investments.

Pending application as provided in this Section 5.03, money and funds in the Construction Fund shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

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

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 6.02. Bonds Not to be Indebtedness of the Issuer. The Bonds 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 shall ever have the right to compel the exercise of the

taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith by a parity lien on the Net Revenues derived from the operation of the System including the sewage assessment fees collected by the Issuer and imposed by the Sewage Treatment Ordinance approved by the Governing Body of the Issuer on _____, 199_. The Revenues derived from the System, in amounts sufficient to pay the principal of and interest on the Bonds and to make the payments into the Series 1999 Bonds Sinking Funds, including the Series 1999 Bonds Reserve Accounts therein, and all other payments provided for in the Ordinance and the Sewage Treatment Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Ordinance.

Section 6.04. Rates. Prior to issuance of the Bonds, equitable rates or charges for the proposed and/or actual use of and service rendered by the System have been or will be established, all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds; provided that, in the event that amounts at least equal to or in excess of the Reserve Requirements are on deposit in the Series 1999 Bonds Reserve Accounts and the Reserve Accounts for the Bonds are funded at least at the requirement provided for in the Ordinance, such balances each Fiscal Year need only equal at least one hundred ten percent (110%) of the maximum amounts required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds.

Section 6.05. Completion, Operation and Maintenance; Schedule of Costs. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Ordinance.

Upon completion of the Project, the Issuer shall file with the Authority a schedule in substantially the form of Amended Schedule A to the loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 6.06. Sale of the System. Except as otherwise required by state law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Outstanding Bonds and effectively defease this Ordinance in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Outstanding Bonds, immediately be remitted to the Commission for deposit in the Series 1999 Bonds Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Outstanding Bonds. Any balance remaining after the payment of all the Outstanding Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of the Authority and IJDC, be remitted by the Issuer to the Commission for deposit in the Series 1999 Bond Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payment of such proceeds into the Series 1999 Bonds Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then outstanding without the prior approval and consent in writing of IJDC and the Holders, or their duly authorized representatives, of sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) in

amount of the Bonds then outstanding. The Issuer shall prepare the form of such approval and consent for execution by IJDC and the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.07 and in Section 6.08B, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Series 1999 Bonds Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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

Section 6.08. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Bonds issued pursuant to this Ordinance, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Bonds and shall be issued with the written consent of the Authority and RUS.

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

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

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

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

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

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

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

payment from such revenues, with the Bonds.

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

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 6.09. 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 IJDC and any Holder of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The Issuer shall keep complete and accurate records of the costs of designing the System, acquiring the Project site and acquiring, constructing and installing the Project. The Issuer shall permit the Authority, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as it may reasonably require in connection with the design, acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

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

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Outstanding Bonds or other obligations outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to IJDC, the Authority and the Government, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Ordinance and the Act and that Gross Revenues are adequate to meet operation/maintenance expenses and debt service requirements.

The Issuer shall also, during construction of the Project and for two (2) years following the completion of the Project, complete a Monthly Financial Report, the form of which is attached to the Loan Agreement as Exhibit B and made a part hereof, and forward a copy by the 10th of each month to the Authority and IJDC.

The Issuer shall provide IJDC with all appropriate documentation to comply with any special conditions established by federal and/or State regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the Government, or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior

to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the Government, or its agents and representatives, with access to the plans, drawings, specifications, System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Government with respect to the System pursuant to the Act.

Section 6.10. Compliance With Loan Agreement, Letter of Conditions, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and the Letter of Conditions and to comply with all applicable laws, rules and regulations issued by the Authority, IJDC, the Government or other state, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.11. Operating Budget and Audit. The Issuer shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated reserves and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall, within thirty (30) days of the adoption thereof, mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to IJDC, the Authority, the Government and to any Holder of any Bond, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to IJDC and to any Holder of any Bond, or anyone acting for and on behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, the report of which audit shall be submitted to the Authority and the Government and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Ordinance and the Loan Agreement.

Section 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and IJDC covering the supervision and inspection of the construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, IJDC and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or

amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit the As-Built Plans to it within sixty (60) days of the completion of the Project. The Issuer shall notify IJDC in writing of such receipt. The Issuer shall submit a "Performance Certificate," the form of which is attached to the Loan Agreement as Exhibit A, to IJDC within sixty (60) days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual to IJDC when the Project is ninety percent (90%) completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is twenty-five percent (25%) complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify IJDC in writing of the certified operator employed at the twenty-five percent (25%) completion stage.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. 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 thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid, to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia. Rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 6.15. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.16. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer and its contractors and subcontractors will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, ON ALL above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

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

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

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

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

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

Section 6.17. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a thirty (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, provided that Issuer gives no assurance of compliance with these requirements for parties outside the limits of the Issuer.

Section 6.18. Completion of Project, Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and State requirements and standards.

The Issuer will obtain all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The Issuer shall use the Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as a local governmental activity of the Issuer.

B. PRIVATE ACTIVITY BOND COVENANT. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

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

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

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

F. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 6.20. Rebate Covenant. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Bonds will be used for local governmental activities of the Issuer. The Issuer reasonably expects it and all its subordinate entities to issue less than \$5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1999, in which the first series of Bonds are to be issued. Therefore, the Issuer believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Issuer is in fact subject to such rebate requirements, the Issuer hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further described in Section 7.03. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.21. Compliance with Loan Agreement. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the IJDC with copies of all documents submitted to the Authority.

Section 6.22. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 6.23. Public Service Commission Approval. The Issuer shall obtain all requisite orders of and approvals from the Public Service Commission of West Virginia necessary for the construction of the Project and operation of the System, and the Authority, IJDC and the Government shall receive an opinion of counsel to the Issuer to such effect.

Section 6.24. Contracts. A. The Issuer shall, simultaneously with the delivery of the Series 1999A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to IJDC for written approval. The Issuer shall obtain the written approval of IJDC before expending any proceeds of the Series 1999A Bonds held in "contingency" as set forth in the Schedule B attached to the Loan Agreement. The Issuer shall also obtain the written approval of IJDC before expending any proceeds of the Series 1999A Bonds made available due to bid or construction or project underruns.

ARTICLE VII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01 and in Section 7.02 and 7.03.

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "Arbitrage Bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal Information Return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 7.03. Tax Certificate and Rebate. If required, the Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

If it is determined that the Issuer does not qualify for an exception to Section 148 of the Code or the Issuer is otherwise subject to rebate in connection with the Bonds, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall pay the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. The Issuer shall pay, or cause to be paid, to the United States the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations.

The Issuer shall assure that such payments are made to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 7.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code or such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as defined in the Code).

The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

Section 7.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

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

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

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

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of Outstanding Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Outstanding Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Outstanding Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to the Outstanding Bonds, or the rights of such Registered Owners.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Ordinance and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bond any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bond and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

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

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

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

of any assets of the System.

ARTICLE IX

DEFEASANCE

Section 9.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Bonds only the pledge of Net Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

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

ARTICLE X

INTERIM CONSTRUCTION FINANCING

Section 10.01. Authorization and General Terms. In order to pay certain costs of the Project pending receipt of proceeds, grant receipts or other funds, the Issuer may issue and sell its Note or Notes (the "Bond Notes"), in an aggregate principal amount not to exceed \$800,000.00. The Notes may be issued as evidence of a line of credit from a commercial bank or other lender, at the discretion

of the Issuer, and as shall be set forth in a Supplemental Resolution. The Bond 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 a Supplemental Resolution.

Section 10.02. Terms of and Security for Bond Notes. The Bond Notes, if issued, shall be issued with such terms and secured in the manner set forth in a Supplemental Resolution.

Section 10.03. Bond Notes are Special Obligations. The Bond Notes shall be special obligations of the Issuer payable as to principal and interest solely from Bond Proceeds, grant receipts, surplus revenues, letter of credit proceeds, if any, and other sources. The Bond 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 of the Issuer is pledged for the payment of the Bond Notes. The holders of the Bond Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Bond 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 a Supplemental Resolution.

Section 10.04. Execution of Documents. The Bond Notes, Credit Agreement and any other documents required to be executed by the commercial bank or other lender shall be executed in the name of the Issuer by the Mayor, and the Mayor and Recorder are hereby authorized to execute any Bond Note, Bond Notes, Credit Agreement or any other documents necessary to secure the interim financing.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Ordinance. No material modification or amendment of this Ordinance, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66.2/3% or more in principal amount of the Bonds so affected and then Outstanding and IJDC and the Authority; provided, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Bonds from gross income of the holders thereof.

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

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

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

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance 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 (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) full days intervening between each publication, in a qualified newspaper published and of general circulation in the City of War, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the City Council upon a date certain, not less than ten (10) days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

First Reading - March 22, 1999

Second Reading - March 29, 1999

Third Reading - April 5, 1999

Enacted Following Public Hearing - April 19, 1999

CITY OF WAR, WEST VIRGINIA

By Thomas C. Hatcher
Mayor

[CITY SEAL]

ATTEST:

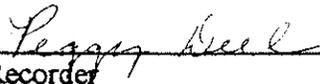
Peggy Deel
Recorder

CERTIFICATION

The undersigned does hereby certify that the attached Ordinance is a true and accurate copy of an Ordinance duly enacted by the Council of the CITY OF WAR, WEST VIRGINIA on April 19, 1999, and that the foregoing document remains in full force and effect and has not been amended.

Dated: April 19, 1999.

[SEAL]


Recorder

CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS, SERIES 1999

RESOLUTION PROVIDING FOR REVISED TOTAL PROJECT COST, BOND TERMS,
REVISED PROJECT DESCRIPTION, REPAYMENT OF DESIGN LOAN AND OTHER
DETAILS AS TO THE SEWER REVENUE BONDS, SERIES 1999, OF THE CITY OF
WAR

WHEREAS, the City of War (the "Issuer"), in the County of McDowell, State of West Virginia, is a municipal corporation of said State, the governing body of which is its Council;

WHEREAS, this Council duly enacted on April 19, 1999, an ordinance (the "Ordinance") entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS,
BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF
THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE
APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF
THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL
AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA
INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT
OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF
AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER
FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY
BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE
ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST
DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION
THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY
FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN
AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS;
PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE
BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM
FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS
AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS
RELATING THERETO.

WHEREAS, the Ordinance provided for the issuance of the Issuer's Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture) (collectively the "Series 1999 Bonds"), in an aggregate principal amounts of \$970,000 and \$500,000, respectively, for the purpose of financing a portion of the costs of the Project, all in accordance with Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Ordinance provided that other matters pertaining to the Series 1999 Bonds be provided for by resolution of this Council supplemental to and amendatory of the Ordinance;

WHEREAS, the Series 1999A and 1999B Bonds are proposed to be purchased by the West Virginia Infrastructure and Jobs Development Council (the "Council") and the United States Department of Agriculture, Rural Utilities Service ("RUS") (the "Original Purchasers"), pursuant to a Loan Agreement and Letter of Conditions, as amended, respectively;

WHEREAS, the bids received to construct the Project exceeded the original estimate of Project costs;

WHEREAS, the Council and RUS have agreed to add additional grant contributions to fund the additional cost of the Project in the amounts of \$200,000 and \$1,100,000, respectively;

WHEREAS, the Issuer's equity contribution to the Project has been reduced by \$60,000 from \$130,000 to \$70,000;

WHEREAS, the net result of the aforementioned funding adjustments is an increase in the total cost of the Project from approximately \$7,700,000 to approximately \$8,940,000;

WHEREAS, the scope of the Project has been modified since the receipt of bids and the enactment of the Ordinance, as more fully described below;

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance; and

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Loan Agreement and Letter of Conditions, as amended, and that other matters relating to the Series 1999 Bonds be herein provided for, all in accordance with the Ordinance.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WAR HEREBY RESOLVES:

Section 1. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1999 Bonds in the aggregate principal amounts of \$970,000 and \$500,000, being the same amounts authorized by the Ordinance. The Series 1999 Bonds shall be dated the date of Closing, to be on or about June 25, 1999, upon original issuance.

Section 2. The Loan Agreement and the Letter of Conditions, as amended, substantially in the forms submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Mayor and Recorder on behalf of the Issuer are hereby authorized, approved and directed.

Section 3. The estimated cost of the Project shall be increased from approximately \$7,700,000 to approximately \$8,940,000 with a reduction in the Issuer's contribution from \$130,000 to \$70,000, an increase in the Council grant from \$3,000,000 to \$3,200,000, and the addition of another RUS grant in the amount of \$1,100,000.

Section 4. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued as follows:

(A) Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$970,000. The Series 1999A Bonds shall be dated the date of delivery thereof, shall mature on June 1, 2039, and shall bear interest at the rate of 0% per annum. The Series 1999A Bonds shall be payable in quarterly installments of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2001, and ending June 1, 2039, in the amounts as set forth in "Schedule X" attached to the Loan Agreement and incorporated in and made a part of the Series 1999A Bonds. The Series 1999A Bonds shall be subject to redemption upon the written consent of the Authority, upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Bonds.

(B) Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture) of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$500,000. The Series 1999B Bonds shall be dated the date of delivery thereof and shall bear interest at the rate of 4.5% per annum. Interest only shall be payable in monthly installments for the first 24 months commencing 30 days following delivery of the Series 1999B Bonds and continuing on the corresponding day of each month. Thereafter, principal and interest shall be payable in monthly installments of \$2,295.00 on the corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of the Series 1999B Bonds, in the sum of the unpaid principal and interest due on the date thereof, except that prepayments may be made as hereinafter provided and as provided in the Series 1999B Bonds. All such payments shall be made at the National Finance Office, St. Louis, Missouri 63103, or at such other place as RUS may designate after issuance of the Series 1999B Bonds. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer.

Section 5. The Issuer's Sewer Revenue Bond, Series 1996, dated September 12, 1996, shall be repaid in full at Closing from a portion of the proceeds of the Series 1999A Bonds.

Section 6. The Project description is hereby amended as follows: the proposed improvements will consist of approximately 9,300 linear feet of river gravity sewer pipe, 26,800 linear feet of road gravity sewer pipe, 23,500 linear feet of standard gravity sewer pipe, 800 linear feet of railroad crossings, 1,000 linear feet of stream crossings, a main influent pump station, a 0.219 MGD secondary sewer treatment facility and related property and equipment.

Section 7. All other provisions relating to the Series 1999 Bonds and the text of the Series 1999 Bonds shall be in substantially the forms provided in the Ordinance.

Section 8. This Resolution shall be effective immediately.

Adopted this 24th day of May, 1999.

[SEAL]

CITY OF WAR, WEST VIRGINIA

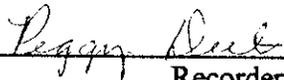
By: Thomas C. Hatcher
Mayor

Perry D. C.
Recorder

CERTIFICATION

Certified a true, correct and complete copy of a Resolution duly adopted by the City Council of the CITY OF WAR at a regular meeting of the City Council held on May 24, 1999, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 24~~th~~ day of May, 1999.



Recorder

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

ABSTRACT OF MINUTES OF MEETING TO CONSIDER ADOPTION OF BOND
ORDINANCE - FIRST READING

I, Manuel Collins, Acting Recorder of the City of War, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

* * *

* * *

* * *

The Council of the City of War met in regular session, pursuant to notice duly given, on the 22nd day of March, 1999, at War, West Virginia, at the hour of 6:00 p.m.

PRESENT: Mayor – Thomas C. Hatcher
Recorder - Peggy Deel
Council Members:
Daniel Guidi
Manuel Collins
Jim Stutso
Joseph Stutso
Margaret Beavers

ABSENT: None

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance would be subject to protests and suggestions from any interested person at a public meeting to be held according to law on April 19, 1999, in the City Council chambers.

Thereupon, the Mayor stated that it would be in order to consider the said Bond Ordinance for enactment upon first reading and he asked the Recorder to read the title of the said Ordinance as follows:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS,
BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF
THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE

APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, it was unanimously ordered that the said Bond Ordinance be enacted upon first reading.

After the completion of all business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

(SEAL)

Thomas C. Hatcher
MAYOR

Acting Manuel Collins
RECORDER

I further hereby 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 25th day of June, 1999.

Acting Manuel Collins
Recorder

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

ABSTRACT OF MINUTES OF MEETING TO CONSIDER ADOPTION OF BOND
ORDINANCE - SECOND READING

I, Manuel Collins, Acting Recorder of the City of War, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

* * *

* * *

* * *

The Council of the City of War met in special session, pursuant to notice duly given, on the 29th day of March, 1999, at War, West Virginia, at the hour of 6:00 p.m.

PRESENT: Mayor – Thomas C. Hatcher
Recorder - Peggy Deel
Council Members:
Daniel Guidi
Manuel Collins
Jim Stutso
Joseph Stutso
Margaret Beavers

ABSENT: None

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance would be subject to protests and suggestions from any interested person at a public meeting to be held according to law on April 19, 1999, in the City Council chambers.

Thereupon, the Mayor stated that it would be in order to consider the said Bond Ordinance for enactment upon first reading and he asked the Recorder to read the title of the said Ordinance as follows:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE

APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, it was unanimously ordered that the said Bond Ordinance be enacted upon first reading.

After the completion of all business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

(SEAL)

Thomas C. Hatcher
MAYOR

Acting Manuel Collins
RECORDER

I further hereby 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 25th day of JUNE, 1999.

Acting Manuel Collins
Recorder

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

**ABSTRACT OF MINUTES OF MEETING TO CONSIDER ADOPTION OF BOND
ORDINANCE - THIRD READING**

I, Manuel Collins, Acting Recorder of the City of War, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

The Council of the City of War met in regular session, pursuant to notice duly given, on the 5th day of April, 1999, at War, West Virginia, at the hour of 6:00 p.m.

PRESENT: Mayor – Thomas C. Hatcher
Recorder - Peggy Deel
Council Members:
Daniel Guidi
Manuel Collins
Jim Stutso
Joseph Stutso
Margaret Beavers

ABSENT: None

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance would be subject to protests and suggestions from any interested person at a public meeting to be held according to law on April 19, 1999, in the City Council chambers.

Thereupon, the Mayor stated that it would be in order to consider the said Bond Ordinance for enactment upon first reading and he asked the Recorder to read the title of the said Ordinance as follows:

**ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS,
BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF
THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE**

APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, it was unanimously ordered that the said Bond Ordinance be enacted upon first reading.

After the completion of all business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

(SEAL)

Thomas C. Hatcher
MAYOR

Acting Manuel Collins
RECORDER

I further hereby 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 25th day of June, 1999.

Acting Manuel Collins
Recorder

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

ABSTRACT OF MINUTES OF PUBLIC HEARING ON BOND ORDINANCE

I, Manuel Collins, Acting Recorder of the City of War, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

The Council of the City of War met in regular session, pursuant to notice duly given, on the 19th day of April, 1999, at War, West Virginia, at the hour of 6:00 p.m.

PRESENT: Mayor – Thomas C. Hatcher
Recorder - Peggy Deel
Council Members:
Daniel Guidi
Manuel Collins
Jim Stutso
Joseph Stutso
Margaret Beavers

The Mayor announced that a quorum of members was present and that the meeting was open for the business properly before it. He stated that the proposed Bond Ordinance heretofore passed on first, second and third readings should be subject to protests and suggestions from any interested persons and declared the meeting to be open as a public hearing for such purposes. Thereupon, the Mayor presented the proposed Bond Ordinance in writing entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF THE CITY OF WAR, WEST VIRGINIA, AT A COST ESTIMATED TO BE APPROXIMATELY \$7,700,000; AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER

FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. The Mayor asked for public comments and there were none. Thereupon, on motion duly made and seconded, it was unanimously ordered that the Bond Ordinance be implemented.

There being no further business to come before the public hearing, on motion duly made and seconded, it was unanimously ordered that the public hearing was concluded.

After the completion of all business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

(SEAL)

Thomas C. Fletcher
MAYOR

Acting Manuel Collins
RECORDER

I further hereby 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 25 day of Jun, 1999.

Acting Manuel Collins
Recorder



AFFIDAVIT OF PUBLICATION:

State of West Virginia
County of McDowell, to wit:

I, Irene Wooten, being first duly sworn upon my oath, do depose and say that I am the Legal Editor of the Welch Daily News, Inc., a corporation, publisher of the newspaper entitled **The Welch Daily News**, a Republican newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily except weekends and holidays for at least fifty weeks during the calendar year, in the Municipality of Welch, McDowell County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and McDowell County, West Virginia; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of _____

TOWN OF WAR

WAR, WV

(NOTICE OF PUBLIC HEARING)

was duly published in said newspaper once a week for 2 successive weeks, (Class II), commencing with the issue of the 9th day of APRIL, 1999, and ending with the issue of the 16th day of APRIL, 1999 (and was posted at the (if required) _____

_____ on the _____ day of _____, 19____; that said annexed notice was published on the following dates: _____

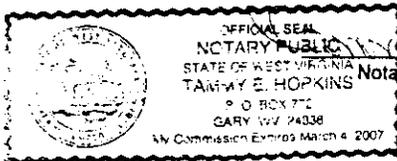
_____ and that the cost of publishing said annexed notice as aforesaid was \$ 111.96

Irene Wooten
Irene Wooten, Legal Editor
The Welch Daily News

Taken subscribed and sworn to before me in my said county this 19th

day of APRIL, 1999

My Commission expires April 24 2007



Tawney E. Hopkins
Notary Public, State of West Virginia

LEGAL NOTICE

NOTICE OF PUBLIC HEARING

Pursuant to the provisions of West Virginia Code Chapter 6, Article 9A, Section 6 and in accordance with the provisions of West Virginia Code Chapter 16, Article 13, as amended, you are hereby notified that a public hearing before the City Council (the Council) of the City of War (the "City") will be held on the 19th day of April 1999, at which public hearing the Council will consider for final adoption an Ordinance entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER SYSTEM OF APPROXIMATELY \$7,700,000 AND THE FINANCING OF THE COST THEREOF THROUGH THE ISSUANCE BY THE CITY OF \$970,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND); AND \$500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONIES OF, OR AVAILABLE TO, THE CITY OF WAR WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST, IF ANY DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LDAN AGREEMENT AND LETTER OF CONDITIONS RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATIONS ON THE SALE OF SYSTEM; APPROVING INTERIM FINANCING; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The ordinance has been read and approved by the Council on first reading on March 22, 1999, on second reading on March 29, 1999, and on third reading on April 5, 1999. The Ordinance would authorize the issuance of the City's \$970,000 Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and \$500,000 Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture) (collectively, the "Bonds"). The Bonds would provide a portion of the funds to acquire, construct and equip certain betterments and improvements to the City's sewer system (the "System").

The entire amount of the principal of and interest on the Bonds would be paid from revenues generated from the operation of the System. The Ordinance further provides as follows:

1. The debt service on the Bonds would be payable from the revenues of the System.

2. The City has the authority under Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, to finance the operations of the System.

3. The City has determined that the revenues generated by the operation of the System are sufficient to pay the principal of and interest on the Bonds as the same become due including all sinking fund and other payments provided for in the Ordinance.

4. The Ordinance provides that it is in the best interest of the City to sell the Series 1999A Bonds at an annual interest rate of 0% and in the principal amount of \$970,000 to the West Virginia Water Development Authority, for the benefit of the West Virginia Infrastructure & Jobs Development Council, and the Series 1999B Bonds at an annual interest rate of 4.5% and in the principal amount of \$500,000 to the United States Department of Agriculture, Rural Utilities Service. The Bonds shall mature 40 years from their date of issuance.

5. The Ordinance provides that the Bonds shall be executed in the name of the City by the Mayor, and the seal of the City shall be attested thereto or impriated thereon and attested by the Recorder. The West Virginia Municipal Bond Commission shall serve as the Paying Agent of the Series 1999A. The McDowell County National Bank in Welch will act as Registrar of the Bonds.

6. The Ordinance provides for the continuation of the Revenue Fund, the disposition of System revenues, the payment of operating expenses, the payment of monthly or quarterly principal and interest when due, the creation of reserve accounts, the continuation of a Renewal and Replacement Fund, and the use of excess funds of the System.

7. The Ordinance provides for the Registrar to register the Bonds.

8. The Ordinance provides for the repayment of certain existing debt of the System, the use of Bond Proceeds for the construction of additions and betterments to the System, and the manner and method of disbursing the proceeds of the 1999 Bonds.

9. The Ordinance provides for the investment of the Bond proceeds and includes covenants designed to maintain the Bonds tax-exempt status.

10. The Ordinance establishes terms for default and remedies of the owners of the Bonds.

A copy of the Ordinance is available for examination by any interested person at City Hall during regular office hours of such office which are 8:00 a.m. to 4:00 p.m., Monday through Friday.

The City contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. The public hearing will be held at City Hall, Main Street, War, West Virginia, on the 19th day of April 1999, at 6:00 p.m., and any person or persons interested may appear before Council and be heard and may present protests and objections to the passage of the Ordinance and the issuance of the Bonds.

Dated this 5th day of April, 1999.
CITY OF WAR, McDOWELL COUNTY, WEST VIRGINIA.
Thomas C. Helmer, Mayor, Mayor Deel, Recorder

IC/WDA-1
(July 1996)

LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency");

CITY OF WAR
(Governmental Agency)

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A. of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

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

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

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

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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

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

ARTICLE I

Definitions

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

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Council Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

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

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

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

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

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

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

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

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

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

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

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

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

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

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

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

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

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

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local

counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available in the Infrastructure Fund funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

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

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

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

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule

X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds, if any (the "Reserve Account"), was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

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

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

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvi) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

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

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

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

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

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

ARTICLE V

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

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

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

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

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

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

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

(xxi) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

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

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

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project, payable

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

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

ARTICLE VII

Miscellaneous

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

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

- (i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

7.9 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Division of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

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

CITY OF WAR

(SEAL)

By: Thomas C. Hatcher
Mayor

Attest:

Date: June 25, 1999

Leggy Deel
Recorder

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

(SEAL)

By: Daniel B. Lyubosky
Director

Attest:

Date: June 25, 1999

Barbara B Meadows
Secretary-Treasurer

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

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

1. My firm is engineer for the acquisition and construction of _____ to the _____ system, as set forth in the plans and specifications approved by [DEP/BPH/PSC] (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed [in part] by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meanings set forth in the _____ [passed/adopted] by the Issuer on _____, _____, and the Loan Agreement by and [between/among] the Issuer, the West Virginia Water Development Authority (the "Authority"), [and the West Virginia Division of Environmental Protection ("DEP"), the Bureau of Public Health ("BPH") or the West Virginia Infrastructure and Jobs Development Council ("IC")] dated _____.

2. The Bonds are being issued for the purposes of _____
_____.

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

are in an amount and otherwise compatible with the plan of financing set forth in Schedule [A/B] and my firm¹ has ascertained that all successful bidder(s) have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidder(s) received any and all addenda to the original bid documents; (v) the bid documents reflect the Project as approved by the [DEP/BPH] and the bid form(s) provided to the bidders contain the central operational components of the Project; (vi) the successful bid(s) include prices for every item on such bid form(s); (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, ²the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b) (ii) of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by [DEP/BPH/PSC]; and (xi) attached hereto as Exhibit A is the final amended "Schedule [A/B] - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

[SEAL]

By: _____

West Virginia License No. _____

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

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

EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
c/o West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the
"Governmental Agency"), a _____

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, 19____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$ _____, issued in the form of one bond registered as to principal and interest to the Authority, with interest and principal payable in installments on September 1, December 1, March 1 and June 1 of each year, beginning _____, at the rate as set forth in Exhibit A incorporated in and made a part of the Bonds.

The Local Bonds are issued for the purpose of _____ and paying certain issuance and other costs in connection therewith.

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

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

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

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

3. The Governmental Agency is a duly organized and presently existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Governmental Agency, payable from the [net] revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the [net] revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. [If required, the Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America. as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for Federal income tax purposes.]

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

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

Very truly yours,

EXHIBIT C

Monthly Financial Report

[Name of Governmental Agency]

[Name of Bond Issue]

Fiscal Year - ____

Report Month: _____

	<u>CURRENT</u>	<u>YEAR TO</u>	<u>BUDGET YEAR</u>	
	<u>MONTH</u>	<u>DATE</u>	<u>TO DATE</u>	<u>DIFFERENCE</u>
1. ITEM Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this ___ day of ___, 19__.

[Name of Governmental Agency]

By: _____
Authorized Officer

CHASFS3:58465

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	\$970,000
Purchase Price of Bonds	\$970,000

Principal on the Bonds is payable quarterly, in the amounts specifically set forth on Schedule Y, commencing March 1, 2001 to and including June 1, 2039. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1, as set forth on Schedule Y attached hereto and incorporated herein by reference. The Bonds shall be issued on a parity with the Governmental Agency's Sewer Revenue Bonds, Series 1999 B (United States Department of Agriculture), issued simultaneously therewith.

The Governmental Agency shall submit its payments monthly to the West Virginia Municipal Bond Commission which will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the West Virginia Municipal Bond Commission in writing by the Authority.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal only and such Bonds shall grant the Authority a shared first lien on the net revenues of the Governmental Agency's system.

The Governmental Agency may prepay the Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Bonds which request must be filed at least 60 days prior to the intended date of issuance.

SCHEDULE Y

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/1999	-	-	-
12/01/1999	-	-	-
3/01/2000	-	-	-
6/01/2000	-	-	-
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	6,299.00	-	6,299.00
6/01/2001	6,299.00	-	6,299.00
9/01/2001	6,299.00	-	6,299.00
12/01/2001	6,299.00	-	6,299.00
3/01/2002	6,299.00	-	6,299.00
6/01/2002	6,299.00	-	6,299.00
9/01/2002	6,299.00	-	6,299.00
12/01/2002	6,299.00	-	6,299.00
3/01/2003	6,299.00	-	6,299.00
6/01/2003	6,299.00	-	6,299.00
9/01/2003	6,299.00	-	6,299.00
12/01/2003	6,299.00	-	6,299.00
3/01/2004	6,299.00	-	6,299.00
6/01/2004	6,299.00	-	6,299.00
9/01/2004	6,299.00	-	6,299.00
12/01/2004	6,299.00	-	6,299.00
3/01/2005	6,299.00	-	6,299.00
6/01/2005	6,299.00	-	6,299.00
9/01/2005	6,299.00	-	6,299.00
12/01/2005	6,299.00	-	6,299.00
3/01/2006	6,299.00	-	6,299.00
6/01/2006	6,299.00	-	6,299.00
9/01/2006	6,299.00	-	6,299.00
12/01/2006	6,299.00	-	6,299.00
3/01/2007	6,299.00	-	6,299.00
6/01/2007	6,299.00	-	6,299.00
9/01/2007	6,299.00	-	6,299.00
12/01/2007	6,299.00	-	6,299.00
3/01/2008	6,299.00	-	6,299.00
6/01/2008	6,299.00	-	6,299.00
9/01/2008	6,299.00	-	6,299.00
12/01/2008	6,299.00	-	6,299.00
3/01/2009	6,299.00	-	6,299.00
6/01/2009	6,299.00	-	6,299.00
9/01/2009	6,299.00	-	6,299.00
12/01/2009	6,299.00	-	6,299.00
3/01/2010	6,299.00	-	6,299.00
6/01/2010	6,299.00	-	6,299.00
9/01/2010	6,299.00	-	6,299.00
12/01/2010	6,299.00	-	6,299.00
3/01/2011	6,299.00	-	6,299.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2011	6,299.00	-	6,299.00
9/01/2011	6,299.00	-	6,299.00
12/01/2011	6,299.00	-	6,299.00
3/01/2012	6,299.00	-	6,299.00
6/01/2012	6,299.00	-	6,299.00
9/01/2012	6,299.00	-	6,299.00
12/01/2012	6,299.00	-	6,299.00
3/01/2013	6,299.00	-	6,299.00
6/01/2013	6,299.00	-	6,299.00
9/01/2013	6,299.00	-	6,299.00
12/01/2013	6,299.00	-	6,299.00
3/01/2014	6,299.00	-	6,299.00
6/01/2014	6,299.00	-	6,299.00
9/01/2014	6,299.00	-	6,299.00
12/01/2014	6,299.00	-	6,299.00
3/01/2015	6,299.00	-	6,299.00
6/01/2015	6,299.00	-	6,299.00
9/01/2015	6,299.00	-	6,299.00
12/01/2015	6,299.00	-	6,299.00
3/01/2016	6,299.00	-	6,299.00
6/01/2016	6,299.00	-	6,299.00
9/01/2016	6,299.00	-	6,299.00
12/01/2016	6,299.00	-	6,299.00
3/01/2017	6,299.00	-	6,299.00
6/01/2017	6,299.00	-	6,299.00
9/01/2017	6,299.00	-	6,299.00
12/01/2017	6,299.00	-	6,299.00
3/01/2018	6,299.00	-	6,299.00
6/01/2018	6,299.00	-	6,299.00
9/01/2018	6,299.00	-	6,299.00
12/01/2018	6,299.00	-	6,299.00
3/01/2019	6,299.00	-	6,299.00
6/01/2019	6,299.00	-	6,299.00
9/01/2019	6,299.00	-	6,299.00
12/01/2019	6,299.00	-	6,299.00
3/01/2020	6,299.00	-	6,299.00
6/01/2020	6,299.00	-	6,299.00
9/01/2020	6,299.00	-	6,299.00
12/01/2020	6,299.00	-	6,299.00
3/01/2021	6,299.00	-	6,299.00
6/01/2021	6,299.00	-	6,299.00
9/01/2021	6,299.00	-	6,299.00
12/01/2021	6,299.00	-	6,299.00
3/01/2022	6,299.00	-	6,299.00
6/01/2022	6,299.00	-	6,299.00
9/01/2022	6,299.00	-	6,299.00
12/01/2022	6,299.00	-	6,299.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+i
3/01/2023	6,299.00	-	6,299.00
6/01/2023	6,299.00	-	6,299.00
9/01/2023	6,299.00	-	6,299.00
12/01/2023	6,299.00	-	6,299.00
3/01/2024	6,299.00	-	6,299.00
6/01/2024	6,299.00	-	6,299.00
9/01/2024	6,299.00	-	6,299.00
12/01/2024	6,299.00	-	6,299.00
3/01/2025	6,299.00	-	6,299.00
6/01/2025	6,299.00	-	6,299.00
9/01/2025	6,299.00	-	6,299.00
12/01/2025	6,299.00	-	6,299.00
3/01/2026	6,299.00	-	6,299.00
6/01/2026	6,299.00	-	6,299.00
9/01/2026	6,299.00	-	6,299.00
12/01/2026	6,299.00	-	6,299.00
3/01/2027	6,299.00	-	6,299.00
6/01/2027	6,299.00	-	6,299.00
9/01/2027	6,299.00	-	6,299.00
12/01/2027	6,299.00	-	6,299.00
3/01/2028	6,298.00	-	6,298.00
6/01/2028	6,298.00	-	6,298.00
9/01/2028	6,298.00	-	6,298.00
12/01/2028	6,298.00	-	6,298.00
3/01/2029	6,298.00	-	6,298.00
6/01/2029	6,298.00	-	6,298.00
9/01/2029	6,298.00	-	6,298.00
12/01/2029	6,298.00	-	6,298.00
3/01/2030	6,298.00	-	6,298.00
6/01/2030	6,298.00	-	6,298.00
9/01/2030	6,298.00	-	6,298.00
12/01/2030	6,298.00	-	6,298.00
3/01/2031	6,298.00	-	6,298.00
6/01/2031	6,298.00	-	6,298.00
9/01/2031	6,298.00	-	6,298.00
12/01/2031	6,298.00	-	6,298.00
3/01/2032	6,298.00	-	6,298.00
6/01/2032	6,298.00	-	6,298.00
9/01/2032	6,298.00	-	6,298.00
12/01/2032	6,298.00	-	6,298.00
3/01/2033	6,298.00	-	6,298.00
6/01/2033	6,298.00	-	6,298.00
9/01/2033	6,298.00	-	6,298.00
12/01/2033	6,298.00	-	6,298.00
3/01/2034	6,298.00	-	6,298.00
6/01/2034	6,298.00	-	6,298.00
9/01/2034	6,298.00	-	6,298.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
12/01/2034	6,298.00	-	6,298.00
3/01/2035	6,298.00	-	6,298.00
6/01/2035	6,298.00	-	6,298.00
9/01/2035	6,298.00	-	6,298.00
12/01/2035	6,298.00	-	6,298.00
3/01/2036	6,298.00	-	6,298.00
6/01/2036	6,298.00	-	6,298.00
9/01/2036	6,298.00	-	6,298.00
12/01/2036	6,298.00	-	6,298.00
3/01/2037	6,298.00	-	6,298.00
6/01/2037	6,298.00	-	6,298.00
9/01/2037	6,298.00	-	6,298.00
12/01/2037	6,298.00	-	6,298.00
3/01/2038	6,298.00	-	6,298.00
6/01/2038	6,298.00	-	6,298.00
9/01/2038	6,298.00	-	6,298.00
12/01/2038	6,298.00	-	6,298.00
3/01/2039	6,298.00	-	6,298.00
6/01/2039	6,298.00	-	6,298.00
Total	970,000.00	-	970,000.00

YIELD STATISTICS

Bond Year Dollars.....	\$20,223.88
Average Life.....	20.849 Years
Average Coupon.....	-
Net Interest Cost (NIC).....	-
True Interest Cost (TIC).....	1.85E-10
Bond Yield for Arbitrage Purposes.....	1.85E-10
All Inclusive Cost (AIC).....	1.85E-10

IRS FORM 8038

Net Interest Cost.....	-
Weighted Average Maturity.....	20.849 Years

of W. Va. Tariff Office

JUL 20 1998

Special Studies Section
P.S.C. W. Va. No. 1
Canceling P.S.C. W. Va. No.

CITY OF WAR, a municipal corporation
OF
WAR, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING
SEWERAGE AND SEWAGE DISPOSAL SERVICE

at War, McDowell County, West Virginia

Filed with THE PUBLIC SERVICE COMMISSION
of
WEST VIRGINIA

Issued April 28, 1998

Effective when project has been under
actual construction for sixty (60) days

Issued by authority of an order of
The Public service Commission of West Virginia
in Case No. 97-1679-S-MA dated April 28, 1998
or as otherwise provided herein.

RECEIVED

JUL 20 1998

Public Service Commission of WV
Utilities Division
Special Studies Section

Issued by City of War, a municipal corporation

By Thomas C. Hatchel

Mayor 7-17-98

CITY OF WAR

Title

P.S.C. W.Va. Tariff No. 1
Original page No. 1

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Sewerage Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

CITY OF WAR

P.S.C. W.Va. Tariff No. 1
Original page No. 2

APPLICABILITY

Applicable to entire territory served

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

METER RATES - MONTHLY BILLING

First	2,000	gallons used per month	\$8.25	per 1,000 gallons
Next	3,000	gallons used per month	\$5.72	per 1,000 gallons
Next	5,000	gallons used per month	\$5.18	per 1,000 gallons
Next	30,000	gallons used per month	\$4.73	per 1,000 gallons
Next	60,000	gallons used per month	\$4.46	per 1,000 gallons
All over	100,000	gallons used per month	\$4.17	per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following amount:
Minimum bill (2,000 gallons) \$16.50 per month

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within 20 days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each bill where it is a appropriate.

CONNECTION CHARGE

Prior to construction	\$ 100.00
After the start of construction	\$250.00

RECONNECTION CHARGE

\$20.00

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS,
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

GENERAL CERTIFICATE

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. INCUMBENCY AND OFFICIAL NAME
7. LOAN AGREEMENT
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. RATES
12. TRUTH AND ACCURACY
13. SPECIMEN BONDS
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of THE CITY OF WAR, McDowell County, West Virginia (the "City"), and the undersigned ATTORNEY for said City, hereby certify in connection with the City of War, West Virginia, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture), in the aggregate principal amounts of \$970,000 and \$500,000, numbered AR-1 and BR-1, respectively, dated the date hereof and bearing interest at the rate of zero percent (0%) per annum as to the Series 1999A Bonds and bearing interest at the rate of four and one-half percent (4.5%) per annum as to the Series 1999B Bonds (collectively, the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as in the Ordinance enacted and adopted by the Council of the City (the "Council") and effective on April 19, 1999 (the "Ordinance"), the Loan Agreement (the "Loan Agreement") entered into between the City and the West Virginia Water Development

Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council ("IJDC") dated June 25, 1999, as to the Series 1999A Bonds, and the Letter of Conditions from the United States Department of Agriculture, Rural Utilities Service ("RUS") to the City, dated December 17, 1997, as amended by Amendment No. 1 dated May 24, 1999, as to the Series 1999B Bonds.

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 the issuance and delivery of the Bonds; nor questioning the proceedings and authority by which the Council authorized the issuance and sale of the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof, including, but not limited to the parity pledge of Net Revenues of the System for such payment; nor questioning the existence of the City or the title of the members or officers of the City, the City Council or the Sanitary Board to their respective offices; nor questioning the design of certain additions, betterments and improvements to the sewer system facilities of the City (the "System"), which is being financed out of the proceeds of sale of the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals and certificates required by law for the acquisition, construction and equipping of the Project, the operation of the System and the issuance of the Bond have been or will be duly and timely obtained and remain in full force and effect. Competitive bids for construction of the Project have been solicited in accordance with West Virginia law, and such bids are still in effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the City or the System since the approval, execution and delivery by the City of the Loan Agreement. There has been no adverse change in the financial condition of the City or the System since the approval by the Authority and IJDC of a loan to assist in the construction of the Project.

The City will use a portion of the proceeds of the Series 1999A Bonds to repay in full, including all accrued interest and administrative fee, its Sewer Revenue Bond, Series 1996, issued in the original principal amount of \$473,500. Upon repayment thereof, the only debt outstanding which will constitute a lien on the Net Revenues of the System will be the Bonds.

5. **SIGNATURES:** The undersigned MAYOR and RECORDER are the duly elected, qualified and serving officers as indicated by the official titles opposite their signatures below, are duly authorized to execute and seal the Bond for the City, and on the date hereof have signed and sealed the Bonds for the City. The seal appearing hereon and on the Bond is the only official seal of the City.

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the City is "City of War", and it is a municipal corporation of the State of West Virginia in McDowell County of said State. The governing body of the City is the Mayor, Recorder and its Council consisting of five (5) Council Members, whose names, terms and offices are as follows:

<u>Name</u>	<u>Date of Termination of Office</u>	<u>Office</u>
Thomas C. Hatcher	June 30, 2001	Mayor
Peggy Deel	June 30, 2001	Recorder
Daniel Guidi	June 20, 2001	Council Member
Manuel Collins	June 30, 2001	Council Member
Jim Stutso	June 30, 2001	Council Member
Joseph Stutso	June 30, 2001	Council Member
Margaret Beavers	June 30, 2001	Council Member

The duly appointed and acting Attorney for the City is William S. Winfrey, II, Esq. Princeton, West Virginia.

7. **LOAN AGREEMENT:** As of the date hereof, (i) representations of the City contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the City has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which is necessary to be disclosed therein in order to make the statements and information contained therein not misleading; and (iv) the City ratifies and reaffirms all the covenants made in the Loan Agreement as if they were specifically set forth herein.

8. **LAND AND RIGHTS-OF-WAY:** All land and all rights-of-way and easements necessary for the construction, operation and maintenance of this System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the City and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the City to pay for the same without jeopardizing the security of or payments on the Bond.

9. **MEETINGS:** All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the City in any way connected with the design, construction, acquisition and financing of the Project and the operation of the System were authorized or adopted at meetings of the Council duly called and held pursuant to all applicable statutes and the customary procedure of Council, and a quorum of duly appointed, qualified and acting members of the Council was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

10. **INSURANCE:** The City will maintain or, as appropriate, will require all contractors to maintain Workers' Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Loan Agreement and the Ordinance.

11. **RATES:** Based upon information submitted by the Consulting Engineers and an independent Public Accountant, the rates and charges for the System which were duly adopted and will become effective sixty (60) days following the commencement of construction on the Project and will remain in full force and effect, will, so long as the Bonds are outstanding, provide Net Revenues sufficient to pay, on a parity basis, (a) the interest upon the Bonds, (b) the necessary fiscal agency charges, (c) the principal amounts of the Bonds at or before its maturity, (d) a margin of safety or reserve for such Bonds and for the payment into the reserve account created on account of the Bond, and (e) meet the requirements set forth in the Loan Agreement.

12. **TRUTH AND ACCURACY:** As of the date hereof, Thomas C. Hatcher, Mayor, and Peggy Deel, Recorder, hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents have been repealed, rescinded, amended or otherwise modified.

13. **SPECIMEN BONDS:** Attached hereto as Exhibit A are specimens of the Bonds which, except as to execution and authentication, are identical in all respects with such Bonds this day delivered to the Authority and to RUS and being substantially in the form prescribed in the Ordinance.

14. **BOND PROCEEDS:** On the date hereof, the Issuer received \$447,244.00 from the Authority, being a portion of the principal amount of the Series 1999A Bond and more than a de minimis amount of the proceeds of the Series 1999A Bond. The balance of the principal amount of the Series 1999A Bond will be advanced to the City as construction of the Project progresses.

On the date hereof, the Issuer received \$34,416.00 from RUS, being a portion of the principal amount of the Series 1999B Bond. The balance of the principal amount of the Series 1999B Bond will be advanced to the City as construction of the Project progresses.

15. **PRIVATE USE OF FACILITIES:** The City shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than ten percent (10%) of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than ten percent (10%) of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bond. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental

units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

16. NO FEDERAL GUARANTY: The Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. CONFLICT OF INTEREST: No officer or employee of the City has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the City, relating to the Bonds, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than five percent (5%) of the particular business enterprise or contract.

18. CLEAN WATER ACT: The project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

19. COUNTERPARTS: This Certificate may be executed in counterpart, and such parts shall be deemed to be the Certificate.

WITNESS our signatures and the official seal of the City of War on the 25th day of June, 1999.

SIGNATURE

OFFICIAL TITLE

Thomas C. Hatcher
Thomas C. Hatcher

Mayor

Manuel Collins
Manuel Collins

Acting Recorder

Will S. Winfrey, II
William S. Winfrey, II

City Attorney

Exhibit A

(Specimen Bonds)

THE CITY OF WAR, WEST VIRGINIA

NON-ARBITRAGE CERTIFICATE

I, Thomas C. Hatcher, Mayor of the City of War, West Virginia (the "City"), being one of the officials of the City duly charged with the responsibility for the issuance of \$970,000 aggregate principal amount of Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and \$500,000 aggregate principal amount of Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture), of the City, both dated June 25, 1999 (collectively, the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations (the "Code"). I am one of the officers of the City charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the City.

2. This certificate may be relied upon as the certificate of the City.

3. The City has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer the certification of which may not be relied upon by holders of obligations of the City or that there is any disqualification of the City by the Internal Revenue Service because a certification made by the City contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the City in existence on June 25, 1999, the date on which the Bonds are to be physically delivered in exchange for the issue prices thereof, and to the best of my knowledge and belief, the expectations of the City set forth herein are reasonable.

5. In the Ordinance pursuant to which the Bonds are issued, the City has covenanted to make no use of the proceeds of the Bonds which would cause the Bonds to be an "arbitrage bond" within the meaning of the Code.

6. A. The Series 1999A Bond was sold on June 25, 1999, to the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council ("IJDC"), for the aggregate principal amount of \$970,000 (100% of par), pursuant to the Loan Agreement dated June 25, 1999, between the City and the Authority, on behalf of IJDC. At closing, \$447,244.00 was advanced to the City by the Authority to pay costs of the Project.

B. The Series 1999B Bond was sold on June 25, 1999, to the United States of America, United States Department of Agriculture, Rural Utilities Service ("RUS"), for the aggregate purchase amount of \$500,000 (100% of par), pursuant to the Letter of Conditions dated December 17, 1997, from the United States Department of Agriculture, RUS to the City, as amended by Amendment No. 1 to Letter of Conditions dated May 24, 1999. At closing, \$34,416.00 was advanced to the City by RUS to pay costs of the Project.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying costs, not otherwise provided, of constructing certain additions, betterments and improvements to the sewer facilities of the City (the "Project"); and (ii) paying costs of issuance and other costs in connection therewith.

8. The total cost of the Project is estimated at \$8,940,000. Sources and uses of funds for the Project are as follows:

<u>SOURCES</u>	
Grants and Local Contribution	\$7,470,000.00
Series 1999A Bonds	970,000.00
Series 1999B Bonds	<u>500,000.00</u>
Total Sources	<u>\$8,940,000.00</u>
<u>USES</u>	
Acquisition, Construction and Equipping of Project	\$8,492,060.56
Repayment of Existing Debt	429,939.44
Costs of Issuance	<u>18,000.00</u>
Total Uses	<u>\$8,940,000.00</u>

The amount of Project costs is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds and as otherwise provided in the Ordinance, no other funds of the City will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without appropriate action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

9. Pursuant to Article IV of the Ordinance, the following special funds or accounts have been created with and shall be held by the Depository Bank or the Commission:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Construction Fund;
- (5) Surplus Fund;
- (6) Rebate Fund;
- (7) Series 1999 Bonds Sinking Fund;
 - (a) Within the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Reserve Account

10. Pursuant to Article V of the Ordinance, the proceeds of the Bonds will be deposited as follows:

- (1) Bonds proceeds in the amount of \$0 will be deposited in the Series 1999 Bonds Sinking Fund and used to pay interest on the Bonds.

(2) Bonds proceeds in the amount of \$0 will be deposited in the Series 1999 Bonds Reserve Account.

(3) The balance of the proceeds of the Bonds will be advanced from time to time for deposit in the Construction Fund and applied solely to payment of Costs of the Project including costs of issuance of the Bonds and related costs.

11. Moneys held in the Series 1999 Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of construction of the Project. Except for transfer to the Rebate Fund as provided for in the Ordinance, all investment earnings on moneys in the Series 1999 Bonds Sinking Fund will be annually withdrawn therefrom and deposited into the Construction Fund until completion of the Project, and thereafter will be deposited, not less than once each year, in the System Revenue Fund, and such amounts will be applied in full, first to the next ensuing interest payment, if any, due on the Bonds, and then to the next ensuing principal payment due thereon.

12. Except for the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account, there are no other funds or accounts established or held by the City which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for Bonds, and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the City encounters financial difficulties. The City does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which have been or will be used to acquire, directly or indirectly, securities, obligations, annuity contracts or other investment-type property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. Less than ten percent (10%) of the proceeds of the Bonds will be deposited in the Series 1999 Bonds Reserve Account or any other reserve or replacement fund. Any amounts deposited in the Reserve Account from time to time by the City will not exceed the maximum annual principal and interest on the Bonds and will not exceed one hundred twenty five percent (125%) of average annual principal and interest on the Bonds. Amounts in the Reserve Account, not to exceed ten percent (10%) of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Reserve Account is required by the Authority, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

13. The City has entered or will, within thirty (30) days following delivery of the Bonds, enter into contracts for the construction of the Project, and the amount to be expended pursuant to such contract exceeds or will exceed the lesser of two and one half percent (2 1/2%) of the estimated total Project cost financed with proceeds from the sale of the Bonds or \$100,000. The construction of the Project will proceed with due diligence to completion and all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project. The construction of the Project is expected to be completed within eighteen (18) months.

14. The City will comply with the provisions of the Code for which the effective date precedes the date of delivery of its Bonds to RUS.

15. Any money deposited in the Series 1999 Bonds Sinking Fund for payment of the principal and interest on the Bonds (other than the Series 1999 Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and any moneys received from the investment of amounts held in the Series 1999 Bonds Sinking Fund (other than in the Series 1999 Bonds Reserve Account therein) will be spent within a 1-year period beginning the date of receipt.

16. All the proceeds of the Bonds which are to be used for the payment of costs of the Project will be expended for such purposes within two (2) years.

17. The amount designated as costs of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

18. All property financed with the proceeds of the Bonds will be held for Federal income tax purposes by (or on behalf of) a qualified governmental unit.

19. The City shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

20. No more than ten percent (10%) of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than five percent (5%) of the proceeds of the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

21. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

22. The City shall use the proceeds of the Bonds solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the City.

23. The City shall not permit at any time or times any of the proceeds of the Bonds, or any other funds of the City, to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as a "private activity bond" within the meaning of the Code. The City will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure that interest on the Bonds is excludable from gross income for federal income tax purposes.

24. The Bonds, in whole or in part, will not be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code.

25. The City has general taxing powers to finance operations of or facilities of the nature of the Project, and the City and all subordinate entities reasonably expect to issue less than \$5,000,000 of tax-exempt obligations during the calendar year in which the Bonds are to be issued and has issued no other tax-exempt obligations during the current calendar year (or if the City has issued tax-exempt obligations, the total of all Bonds issued will be less than the \$5,000,000).

26. The City has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the Bonds.

27. The City shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code. The yield on the Series 1999B Bonds is 4.79726%.

28. The City has either (a) funded the Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Reserve Account which will be funded with equal payments on a monthly basis over a ten (10) year period until such Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Reserve Account and the Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

29. The City shall submit to RUS within thirty (30) days following the end of the City's Bonds year a certified copy of its rebate calculation, or if the City qualifies for the small governmental issuer exception to rebate, then the City shall submit to RUS a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bonds year which would make the Bonds subject to rebate.

30. The City expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

31. The City covenants and agrees to comply with the rebate requirements of the Code, if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

32. Goodwin & Goodwin, LLP is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

33. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

IN WITNESS WHEREOF, I have set my hand this 25th day of June, 1999.

CITY OF WAR, WEST VIRGINIA

By: Thomas C. Hatcher
Mayor

\$970,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF CONSULTING ENGINEER

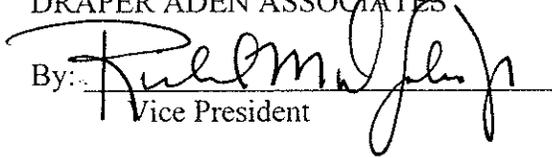
I, Richard M. DiSalvo Jr., Registered Professional Engineer, West Virginia License No. 13956 and Vice President of DRAPER ADEN ASSOCIATES, Consulting Engineers, Blacksburg, Virginia, hereby certify that my firm is engineer for the acquisition, construction and equipping of certain additions, betterments and improvements to the sewer system (herein called the "Project") of the City of War (the "Issuer"), located in McDowell County, West Virginia, which costs are being financed by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Ordinance enacted and adopted by the City Council of the Issuer and effective on April 19, 1999 (the "Ordinance"), the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council ("IJDC"), dated June 25, 1999, and the Letter of Conditions from the United States Department of Agriculture, Rural Utilities Service, to the City dated December 17, 1997, as amended by Amendment No. 1 dated May 24, 1999.

1. The Bond is being issued for the purpose of financing the costs of the Project and costs of issuance.

2. The undersigned hereby certifies that to the best of his knowledge after due inquiry (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in accordance with the approved plans and specifications which have been prepared by my firm as described in and in accordance with the application submitted to the Authority requesting the Authority to purchase the Bond (the "Application") and have been approved by all necessary governmental bodies, (ii) the Project, as designed, is adequate for the purpose for which it will be designed and will have an estimated useful life of at least forty (40) years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has obtained or will obtain all permits required by the laws of the State and the federal government necessary for the construction of the Project and operation of the System, (iv) as of the effective date thereof, the rates and charges for the System as adopted by the City Council of the Issuer are sufficient to comply with the provisions of Subsection 4.1 of the Loan Agreement, (v) the net proceeds of the Bond, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the

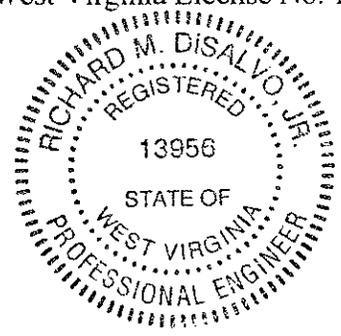
proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction of the Project as set forth in the Application, (vi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project, (vii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Exhibit A and my firm has ascertained that all successful bidder(s) have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy, (viii) the successful bidder(s) received any and all addenda to the original bid documents, (ix) the bid documents relating to the Project reflect the Project as described in the Application and the bid form(s) provided to the bidders contain all critical operational components of the Project, (x) the successful bid(s) include prices for every item on such bid form(s), and (xi) the uniform bid procedures were followed.

WITNESS my signature and seal on this 25th day of June, 1999.

DRAPER ADEN ASSOCIATES
By: 
Vice President

West Virginia License No. 13956

[SEAL]



WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

SCHEDULE B

EXHIBIT A

CITY OF WAR

Wastewater Treatment Plant and Collection System Project 95S-012

FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS, AND COST OF FINANCING

Cost of Project	Total	SCBG	RUS Loan	IJDC Loan	Local	RUS Sub Grant	RUS Grant	IJDC Grant
1. Construction (Bids w/Plant Deduct)	\$6,941,100.00	\$619,000.00	\$392,630.00	\$501,500.00		\$999,700.00	\$1,643,700.00	\$2,784,570.00
1A Construction Contingency	\$277,600.00					\$43,000.00	\$117,300.00	\$117,300.00
2. Technical Services	\$393,132.00	\$56,000.00	\$21,850.00	\$24,000.00			\$89,000.00	\$202,282.00
3. Legal & Fiscal	\$42,150.00		\$30,520.00					\$11,630.00
4. Administrative	\$125,000.00	\$125,000.00						
5. Sites & Other Lands	\$100,000.00	\$100,000.00						
6. Bond Counsel (Other Sources)	\$23,500.00		\$10,000.00	\$13,500.00				
7. Interim Financing Costs*	\$52,200.00		\$45,000.00		\$7,200.00			
8. Lateral-Service	\$450,000.00	\$350,000.00			\$62,800.00			\$37,200.00
9. Project Contingency	\$104,318.00					\$57,300.00		\$47,018.00
Total of Lines 1 through 9	\$8,509,000.00	\$1,250,000.00	\$500,000.00	\$539,000.00	\$70,000.00	\$1,100,000.00	\$1,850,000.00	\$3,200,000.00
B. Sources of Fund								
10. Federal Grants:								
a. SCBG	\$1,250,000.00							
b. RUS	\$1,850,000.00							
c. RUS Sub. Grant	\$1,100,000.00							
11. State Grants:								
a.								
12. Other Grants:								
13. Any Other Source:								
a. RUS Loan	\$500,000.00							
b. Local	\$70,000.00							
14. Infrastructure Fund Grant	\$3,200,000.00							
15. Total of Lines 10 through 14	\$7,970,000.00							
16. Net Proceeds Required from Bond								
Issue (Line 9 minus Line 15)	\$539,905.88							
C. Cost of Financing								
17. Funded Reserve Account**	\$0.00							
18. Other Costs Bond Counsel	\$0.00							
a. Refinancing SRF	\$431,000.00	\$0.00	\$0.00	\$431,000.00	\$0.00	\$0.00	\$0.00	\$0.00
19. Total Cost of Financing								
(Lines 17 and 18)	\$431,000.00							
20. Size of IJDC Bond Issue	\$970,000.00							
TOTAL FUNDING	\$8,940,000.00	\$1,250,000.00	\$500,000.00	\$970,000.00	\$70,000.00	\$1,100,000.00	\$1,850,000.00	\$3,200,000.00

Thomas C. Hatcher 6-25-99
MAYOR - CITY OF WAR DATE

Debra Ann Aron
by [Signature]
CONSULTING ENGINEER

6/15/99
DATE

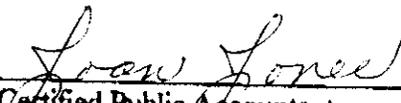
1. INCLUDE THE PROCEEDS OF ANY PARTY OR SUBORDINATE BOND ISSUE TO BE USED FOR SUCH PURPOSE AND ATTACHED SUPPORTING DOCUMENTATION.
2. CONSULT WITH BOND COUNSEL AND THE COUNCIL BEFORE ASSUMING A FUND RESERVE.
3. FOR EXAMPLE, FEES OF ACCOUNTS, BOND COUNSEL AND LOCAL COUNSEL FOR THE GOVERNMENTAL AGENCY.

\$970,000
 CITY OF WAR
 SEWER REVENUE BONDS
 SERIES 1999A
 (WEST VIRGINIA INFRASTRUCTURE FUND)
 and
 \$500,000
 CITY OF WAR
 SEWER REVENUE BONDS
 SERIES 1999B
 (UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

I, Joan Jones, a Certified Public Accountant, License No. 3448, Bradshaw, West Virginia, have reviewed the sewer service rates which were enacted by the City of War (the "City"), pursuant to a Sewage Treatment Ordinance adopted by the City on November 17, 1997 (the "Rate Ordinance"). It is my opinion that the schedule of rates set forth in the Rate Ordinance are adequate to pay operation and maintenance expenses of the System, as defined in the Bond Ordinance, hereinafter described, to pay the principal of and interest on the Bonds, as defined in the Bond Ordinance, and to meet the one hundred fifteen percent (115%) debt service coverage requirement of the Bonds and the Bond Ordinance enacted and adopted by the City Council of the City and effective on April 19, 1999, and are sufficient to comply with the provisions of the Loan Agreement entered into between the City and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, dated June 25, 1999, and the Letter of Conditions from the United States Department of Agriculture, Rural Utilities Service to the City dated December 17, 1997, as amended by Amendment No. 1 to Letter of Conditions dated May 24, 1999.

WITNESS my signature as of this 23rd day of June, 1999.



 Certified Public Accountant

\$970,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

**CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED**

I, Manuel Collins as Acting Recorder of the City of War, West Virginia (the "City"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the \$970,000 City of War, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and \$500,000 City of War, Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture) (collectively, the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the City and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Order Creating the City.
2. Ordinance Creating Sanitary Board.
3. Minutes of the July 8, 1996 meeting of Council wherein the Ordinance Creating the Sanitary Board was enacted.
4. Oaths of Office of the Mayor, Recorder, Members of Council and Members of Sanitary Board.
5. Sewage Treatment Ordinance enacted on November 17, 1997.
6. Minutes of the meetings of Council wherein the Sewage Treatment Ordinance was considered and approved on first, second and third readings and adopted after a public hearing.
7. Affidavit of publication of the abstract and notice of public hearing on the Sewage Treatment Ordinance published in the Welch Daily News.
8. Bond Ordinance (the "Ordinance") enacted on April 19, 1999, and Supplemental Resolution approved on May 24, 1999.

9. Minutes of the March 22, March 29, and April 5, 1999 meetings of Council wherein the Ordinance was considered and approved on first, second and third readings, respectively, and minutes of the April 19, 1999 public hearing at which the Ordinance was considered.

10. Affidavit of publication of the abstract and notice of public hearing on the Ordinance published in the Welch Daily News.

11. Loan Agreement dated June 25, 1999.

12. Letter of Conditions dated December 17, 1997, as amended by Amendment No. 1 dated May 24, 1999.

WITNESS my signature and the official seal of the City of War, West Virginia as of the 25th day of June, 1999.

Manuel Collins
Acting Recorder, City of War

(SEAL)

WRD 1A-82
Revised 11/97



STATE OF WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES
1201 GREENBRIER STREET
CHARLESTON, WV 25311

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

Permit No.: WV0040371

Issue Date: October 27, 1998

Subject: Sewage Facilities

Effective Date: November 27, 1998

Expiration Date: October 26, 2002

Supersedes: WV/NPDES Permit No. WV0040371
Issuance Date: June 17, 1994

Location:

War

McDowell

Tug Fork/Big Sandy

(City)

(County)

(Drainage Basin)

Outlets:

Latitude: 37° 18' 42" N
Longitude: 81° 41' 45" W

To whom it may concern:

This is to certify that

City of War
P. O. Box 280
War, WV 24892

is hereby granted a NPDES Water Pollution Control Permit to: acquire, construct, install, operate and maintain a wastewater collection system, and a 0.13 million gallons per day sequential batch reactor wastewater treatment plant, which are further described as follows.

A wastewater collection system to be comprised of approximately 388 linear feet of four(4) inch diameter gravity sewer line, 19,800 linear feet of six(6) inch diameter gravity sewer line, 31,000 linear feet of eight(8) inch diameter gravity sewer line, 9,800 linear feet of 10 inch diameter gravity sewer line, 282 manholes, 92 cleanouts, and all requisite appurtenances.

(Continued on Page 2 of 8)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 25th day of June, 1999, by and between THE CITY OF WAR, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and MCDOWELL COUNTY NATIONAL BANK IN WELCH, a national banking association, having its principal office in Welch, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$970,000 and \$500,000 aggregate principal amounts of Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture), in fully registered form (collectively, the "Bonds"), pursuant to an Ordinance enacted by the Issuer and effective on April 19, 1999 (the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for the appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of the Paying Agent and Registrar, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver the Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Paying Agent and Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, reasonable compensation for services rendered and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement the provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon sixty (60) days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: The City of War
 Attention: Mayor
 P.O. Box 280
 War, West Virginia 24892

REGISTRAR: McDowell County National Bank in Welch
 Attention: David W. Falin
 Trust Department
 P.O. Box 549
 Welch, WV 24801-0549

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance and instructions provided by the Issuer and the Purchaser thereof.

IN WITNESS WHEREOF, THE CITY OF WAR and MCDOWELL COUNTY NATIONAL BANK IN WELCH have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

THE CITY OF WAR

By: Thomas C. Hatcher
 Mayor

MCDOWELL COUNTY NATIONAL BANK IN WELCH

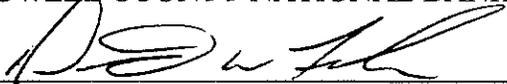
By: 
Trust Officer

Exhibit A

See Ordinance (Tab No. 5)

\$970,000
City of War, West Virginia
Sewer Revenue Bonds
Series 1999A
(West Virginia Infrastructure Fund)
and
\$500,00
City of War, West Virginia
Sewer Revenue Bonds
Series 1999B
(United States Department of Agriculture)
Acceptance of Duties as Depository Bank

Ameribank, a state banking corporation, at its branch located in War, McDowell County, West Virginia, hereby accepts appointment as Depository Bank in connection with an Ordinance of the City of War (the "City") duly enacted by the City Council of the City (the "Council") and effective on April 19, 1999 (the "Ordinance"), authorizing issuance by the City of its Sewer Revenue Bonds, Series 1999A (West Virginia infrastructure Fund) and Series 1999B (United States Department of Agriculture) dated June 25, 1999, in the aggregate Principal Amounts of \$970,000 and \$500,000 respectively, and agrees to perform all duties of Depository Bank in connection with the Sonstruction Fund, all as set forth in the Ordinance.

Witness my signature as of the 25th day of June, 1999.

Ameribank

BY: Betty H. Wagner
Branch Manager

\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS,
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS,
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

ACCEPTANCE OF DUTIES AS REGISTRAR

McDowell County National Bank in Welch, a national banking association, with its principal office located in Welch, McDowell County, West Virginia, hereby accepts appointment as Registrar in connection with an Ordinance of The City of War (the "City") duly enacted by the City Council of the City (the "Council") and effective on April 19, 1999 (the "Ordinance"), authorizing issuance of the City of War Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture), dated June 25, 1999, in the aggregate principal amounts of \$970,000 and \$500,000, respectively, and agrees to perform all duties of Registrar as set forth in the Ordinance.

Witness my signature as of the 25th day of June, 1999.

MCDOWELL COUNTY NATIONAL BANK IN WELCH

By: 
Trust Officer

REQUEST AND AUTHORIZATION AS TO AUTHENTICATION
AND DELIVERY OF THE BONDS

June 25, 1999

McDowell County National Bank in Welch
Trust Department
P.O. Box 549
Welch, WV 24801-0549

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$970,000 City of War, West Virginia, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund), in the form of one bond, numbered AR-1 (the "Series 1999A Bond"), of the City of War (the "City"), authorized to be issued under and pursuant to the Ordinance, duly enacted by the Council of the City and effective on April 19, 1999.

You are hereby requested and authorized to authenticate and register the Series 1999A Bond and to deliver the Series 1999A Bond on behalf of the City to the West Virginia Water Development Authority, the original purchaser thereof, upon receipt by the City of \$447,244.00, being more than a de minimis portion of the \$970,000 proceeds of the Series 1999A Bonds.

THE CITY OF WAR

By: Thomas C. Fletcher
Mayor

(SEAL)

Attest:

Manuel Collins
Acting Recorder

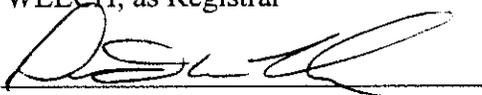
\$970,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF REGISTRATION OF BONDS

I, David W. Falin, Trust Officer of McDowell County National Bank in Welch, as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and the City of War (the "City") dated as of the date hereof, hereby certify that on the 25th day of June, 1999, the bonds of the City in the principal amounts of \$970,000 and \$500,000, respectively, designated "City of War, Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture)", and numbered AR-1 and BR-1, dated as of the date hereof, were registered as to principal and interest in the name of "The West Virginia Water Development Authority" and "The United States of America", respectively, on the books of the Registrar kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature as of the 25th day of June, 1999.

MCDOWELL COUNTY NATIONAL BANK
IN WELCH, as Registrar

By: 
Trust Officer

BOND REGISTRY

\$970,000
CITY OF WAR
SEWER REVENUE BONDS,
SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE)

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
AR-1	\$970,000	West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311-1571	June 25, 1999
BR-1	\$500,000	United States of America United States Department of Agriculture 298 Ragland Road Beckley, WV 25801	June 25, 1999

ALL ASSIGNMENTS OR CHANGES OF OWNERSHIP OF THIS BOND MUST BE REPORTED ON THIS REGISTRY PURSUANT TO SECTION 3.05 OF THE BOND ORDINANCE.

\$970,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)
and
\$500,000
CITY OF WAR
SEWER REVENUE BONDS
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "WDA"), Rose Mary Christian, Rural Development Specialist of the United States Department of Agriculture, Rural Utilities Service ("RUS"), and Thomas C. Hatcher, Mayor of the City of War, McDowell County, West Virginia (the "Issuer"), hereby certify as follows:

1. On the 25th day of June, 1999, the WDA and RUS received the entire original issue in aggregate principal amounts of \$970,000 and \$500,000 of the Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) and Series 1999B (United States Department of Agriculture), respectively, of the Issuer (collectively, the "Bonds"). The Bonds, as so received on original issuance, are dated June 25, 1999, and are issued as Bond Number AR-1 and BR-1, in the denominations of \$970,000 and \$500,000, respectively.

2. At the time of such receipt of the Bonds, the Bonds have been executed by Thomas C. Hatcher, as Mayor of the Issuer, by his manual signature, and by Manuel Collins, as Acting Recorder of the Issuer, by his manual signature, and the official seal of the Issuer had been imprinted upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the WDA, as the original purchaser of the Bond Number AR-1, of \$447,244.00, being a portion of the proceeds of Bond Number AR-1, and from RUS, as the original purchaser of Bond Number BR-1, of \$34,416.00, being a portion of the proceeds of Bond Number BR-1. The balance of the proceeds of the Series 1999A Bond and Series 1999B Bond will be advanced from time to time to pay costs of the Project as described in the Loan Agreement and in the Letter of Conditions, as amended.

IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the West Virginia Water Development Authority, the United States Department of Agriculture, Rural Utilities Service, and the City of War, McDowell County, West Virginia, as of the 25th day of June, 1999.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: *Daniel B. Lybush*
Director

UNITED STATES DEPARTMENT OF
AGRICULTURE, Rural Utilities Service

By: *Lore Mary Christian*

Its: *Rural Development Specialist*

THE CITY OF WAR

By: *Thomas C. Hatcher*
Mayor

City of War
PO Box 280
War, West Virginia 24892
304-875-3111 Phone/Fax

June 21, 1999

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

NOTICE OF DELIVERY OF BOND

Pursuant to Paragraph 3.4 of the Loan Agreement between the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, and the City of War, West Virginia, you are hereby notified that the City can deliver Bond Number AR-1 on any date on or after June 25, 1999.

CITY OF WAR

By: *Thomas C. Hatcher*
Mayor

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code: 3. Maturity date (if any): **6/1/2039**

1. Debtor(s) (Last Name First) and address(es)

**City of War
P.O. Box 280
War, WV 24892**

2. Secured Party(ies) and address(es)

**West Virginia Water
Development Authority
180 Association Drive
Charleston, WV 25311-1571**

For Filing Officer (Date, Time, Number, and Filing Office)

**0520561
99 JUN 23 11:48**

4. This financing statement covers the following types (or items) of property:

Statutory mortgage lien on accounts, net revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$970,000 City of War, Sewer Revenue Bonds, Series 1999A, and by Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public bond issue of the City of War, McDowell County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.

5. Assignee(s) of Secured Party and Address(es)

Filed with:

Secretary of State of WV

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check if so)

already subject to a security interest in another jurisdiction when it was brought into this state.

which is proceeds of the original collateral described above in which a security interest was perfected:

Check if covered: Proceeds of Collateral are also covered. Products of Collateral are also covered. No. of additional Sheets presented:

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party, certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

Date _____ 19 _____

By: _____
(Signature of Secured Party or Assignee of record. Not Valid Until Signed.)

Filing Officer is requested to note file number date and hour of filing on this copy and return to the person filing, as an acknowledgement.

(3) FILING OFFICER COPY-ACKNOWLEDGEMENT

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code: 3. Maturity date (if any): **6/25/2039**

1. Debtor(s) (Last Name First) and address(es)

**City of War
P.O. Box 280
War, WV 24892**

2. Secured Party(ies) and address(es)

**United States Department of
Agriculture
Rural Utilities Service
298 Ragland Road
Beckley, WV 25801**

For Filing Officer (Date, Time, Number, and Filing Office)

0520562

99 JUN 29 PM 1:48

FILED

4. This financing statement covers the following types (or items) of property:

Statutory mortgage lien on accounts, net revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$500,000 City of War, Sewer Revenue Bonds, Series 1999B, and by Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public bond issue of the City of War, McDowell County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.

5. Assignee(s) of Secured Party and Address(es)

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check if so)

already subject to a security interest in another jurisdiction when it was brought into this state.

which is proceeds of the original collateral described above in which a security interest was perfected:

Filed with:

Secretary of State of WV

Check if covered: Proceeds of Collateral are also covered. Products of Collateral are also covered. No. of additional Sheets presented:

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

Date _____ 19 _____

By: _____
(Signature of Secured Party or Assignee of record. Not Valid Until Signed)

Filing Officer is requested to note file number date and hour of filing on this copy and return to the person filing, as an acknowledgement.

(3) FILING OFFICER COPY-ACKNOWLEDGEMENT

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code: 3. Maturity date (if any): **6/1/2039**

1. Debtor(s) (Last Name First) and address(es) City of War P.O. Box 280 War, WV 24892	2. Secured Party(ies) and address(es) West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311-1571	For Filing Officer (Date, Time, Number, and Filing Office) 27
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4. This financing statement covers the following types (or items) of property:
Statutory mortgage lien on accounts, net revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$970,000 City of War, Sewer Revenue Bonds, Series 1999A, and by Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended.
This Financing Statement is filed in connection with a public bond issue of the City of War, McDowell County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.

5. Assignee(s) of Secured Party and Address(es)

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check if so)
 already subject to a security interest in another jurisdiction when it was brought into this state.
 which is proceeds of the original collateral described above in which a security interest was perfected.

Filed with:
**Clerk of County Commission
of McDowell County, WV**

Check if covered: Proceeds of Collateral are also covered. Products of Collateral are also covered. No. of additional Sheets presented:

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

Date _____ 19 _____

By: _____
(Signature of Secured Party or Assignee of record. Not Valid Until Signed.)

Filing Officer is requested to note file number date and hour of filing on this copy and return to the person filing, as an acknowledgement.

(3) FILING OFFICER COPY-ACKNOWLEDGEMENT

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code: 3. Maturity date (if any): **6/25/2039**

1. Debtor(s) (Last Name First) and address(es)

**City of War
P.O. Box 280
War, WV 24892**

2. Secured Party(ies) and address(es)

**United States Department of
Agriculture
Rural Utilities Service
298 Ragland Road
Beckley, WV 25801**

For Filing Officer (Date, Time, Number, and Filing Office)

32

4. This financing statement covers the following types (or items) of property:

Statutory mortgage lien on accounts, net revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$500,000 City of War, Sewer Revenue Bonds, Series 1999B, and by Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended.

Assignee(s) of Secured Party and Address(es)

This Financing Statement is filed in connection with a public bond issue of the City of War, McDowell County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check if so)

Filed with:

- already subject to a security interest in another jurisdiction when it was brought into this state.
- which is proceeds of the original collateral described above in which a security interest was perfected:

**Clerk of County Commission
of McDowell County, WV**

Check if covered: Proceeds of Collateral are also covered. Products of Collateral are also covered. No. of additional Sheets presented: -

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

Date _____ 19 _____

By: _____
(Signature of Secured Party or Assignee of record. Not Valid Until Signed.)

Filing Officer is requested to note file number date and hour of filing on this copy and return to the person filing, as an acknowledgement.

(3) FILING OFFICER COPY-ACKNOWLEDGEMENT

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Internal Rev. Serv. Center
 Ogden, UT 84201
 RECEIVED
 Ogden, UT 84201

4a. Article Number

24240216842

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

8. Addressee's Address (Only if requested and fee is paid)

SEP 27 1999

Thank you for using Return Receipt Service.

LAW OFFICES
GOODWIN & GOODWIN, LLP
P. O. BOX 2107
1500 ONE VALLEY SQUARE
CHARLESTON, WEST VIRGINIA 25328-2107
304/346-7000
TELECOPIER 304/344-9692

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
304/465-2345

P. O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
304/372-2651

REPLY TO: **Charleston**

September 20, 1999

Via Certified Mail-Return Receipt
Requested No. Z424026842
Internal Revenue Service
Ogden, UT 84201

Re: \$500,000 City of War, West Virginia, Sewer Revenue Bonds,
Series 1999B (United States Department of Agriculture)

Gentlemen:

Enclosed is Form 8038-G filed on behalf of the City of War, West Virginia which provides the information required by Section 149(e) of the Internal Revenue Code of 1986, as amended. We have also enclosed a file copy to be returned to our office (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Sincerely yours,

W. K. Bragg, Jr.
William K. Bragg, Jr.

WKB/bas
Enclosure

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)
 ► See separate instructions.

OMB No. 1545-0720

Caution: Use Form 8038-GC if the issue price is under \$100,000.

Part I Reporting Authority If Amended Return, check here

1 Issuer's name City of War (West Virginia)	2 Issuer's employer identification number 55 6000262
3 Number and street (or P.O. box if mail is not delivered to street address) P.O. Box 280	4 Report number G1999-2
5 City, town, or post office, state, and ZIP code War, WV 24892	6 Date of issue 6/25/99
7 Name of issue Sewer Revenue Bond, Series 1999A (W.Va. Infrastructure Fund)	8 CUSIP number N/A
9 Name and title of officer or legal representative whom the IRS may call for more information W.K. Bragg, Jr., Goodwin & Goodwin, LLP	10 Telephone number of officer or legal representative (304) 346-7000

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)	15 970,000
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

Part III Description of Obligations. (Complete for the entire issue for which this form is being filed.)

(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 6/1/39	\$ 970,000	\$ Par	20.849 years	0 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23 970,000
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 8,000
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29 8,000
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30 962,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.) N/A

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	years
33 Enter the last date on which the refunded bonds will be called	
34 Enter the date(s) the refunded bonds were issued	

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract	
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer and the date of the issue	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here
 Signature of issuer's authorized representative: Thomas C. Hatcher Date: 6/25/99
 Type or print name and title: Thomas C. Hatcher, Mayor

Part I Reporting Authority

If Amended Return, check here

1 Issuer's name City of War (West Virginia)		2 Issuer's employer identification number 55 6000262	
3 Number and street (or P.O. box if mail is not delivered to street address) P.O. Box 280		Room/suite	4 Report number G 1999-1
5 City, town, or post office, state, and ZIP code War, WV 24892		6 Date of issue 6/25/99	
7 Name of issue Sewer Revenue Bond, Series 1999B (U.S. Dep't. of Agriculture)		8 CUSIP number N/A	
9 Name and title of officer or legal representative whom the IRS may call for more information W. K. Bragg, Jr., Goodwin & Goodwin, LLP		10 Telephone number of officer or legal representative (304) 346-7000	

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)	15 500,000
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe <input type="checkbox"/>	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

Part III Description of Obligations. (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	6/25/39	\$ 500,000	\$ Par	26.46 years	4.79726 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23 500,000
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 10,000
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29 10,000
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30 490,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

N/A

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	_____ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	_____ years
33 Enter the last date on which the refunded bonds will be called	_____
34 Enter the date(s) the refunded bonds were issued	_____

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract	_____
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer _____ and the date of the issue _____	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(II) (small issuer exception), check box <input type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here

Thomas C. Hatcher 6/25/99 **Thomas C. Hatcher, Mayor**
 Signature of issuer's authorized representative Date Type or print name and title

LAW OFFICES
GOODWIN & GOODWIN, LLP
P. O. BOX 2107
1500 ONE VALLEY SQUARE
CHARLESTON, WEST VIRGINIA 25328-2107
304/346-7000
TELECOPIER 304/344-9692

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
304/485-2345

P. O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
304/372-2651

REPLY TO:

Charleston

June 25, 1999

West Virginia Water Development
Authority
180 Association Drive
Charleston, WV 25311-1571

West Virginia Infrastructure and Jobs
Development Council
980 One Valley Square
Charleston, WV 25301

Re: \$970,000 City of War, West Virginia, Sewer Revenue Bonds, Series 1999A
(West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We are bond counsel to the City of War, West Virginia (the "City"), a municipal corporation located in McDowell County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the Loan Agreement, dated June 25, 1999, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the City and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council ("IJDC"), and (ii) the issuance of a sewer system revenue bond of the City, dated June 25, 1999 (the "Bond"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bond is in the principal amount of \$970,000 and is issued in the form of one bond registered as to principal to the Authority.

The Bond is non-interest bearing. Principal on the Bond is payable in quarterly installments commencing March 1, 2001, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Schedule Y to the Loan Agreement. The final installment of principal on the Bond shall be paid at the end of forty (40) years from the date of issuance of the Bond.

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The Bond is issued for the purpose of financing a portion of the costs of acquiring, constructing and equipping certain additions, betterments and improvements for a new sewer system and paying certain issuance and other costs in connection therewith (the "Project").

We have also examined the applicable provisions of Chapter 16, Article 13 and Chapter 31, Article 15A of the Code of West Virginia of 1931, as amended (collectively, the "Act"), and the Bond has been authorized by a Bond Ordinance duly enacted by the City Council of the City ("Council") effective on April 19, 1999 (the "Ordinance"), pursuant to and under which Act and Ordinance the Bond is authorized and issued, and the Loan Agreement has been undertaken. The Bond is subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement.

In rendering this opinion, we have relied, in part, upon the opinion of William S. Winfrey, II, as the City's Counsel, for the proper enactment of the Sewage Treatment Ordinance, sewer rates, matters related to the valid existence of the City and other issues.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the City and is a valid and binding special obligation of the City enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and IJDC and cannot be amended so as to affect adversely the rights of the Authority or IJDC or diminish the obligations of the City without the consent of the Authority and IJDC.
3. The City is a duly organized and presently existing municipal corporation of the State of West Virginia, with full power and authority to construct the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bond, all under the Act and other applicable provisions of law. The City has legally and validly created the Sanitary Board and has taken all legal action necessary to operate a sewer system.
4. The City has legally and effectively enacted the Ordinance and has satisfied all other necessary requirements in connection with the issuance and sale of the Bond. The Ordinance contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.
5. The Bond is a valid and legally enforceable special obligation of the City, payable from the Net Revenues of the System on a parity with the Issuer's Sewer Revenue Bonds, Series 1999B (United States Department of Agriculture), issued in the principal amount of \$500,000, as referred to in the Ordinance, and secured by a parity lien on and pledge of the Net Revenues of said System, all in accordance with the terms of the Bond, the Ordinance and the Sewage Treatment Ordinance enacted on November 17, 1997, and has been duly issued and delivered to the Authority. The City has reserved the right to issue additional bonds ranking on a parity with the Bond, as provided in the Ordinance. The City has certified, and an independent certified public accountant has certified, that the rates and charges generated by the Sewage Treatment Ordinance are sufficient to pay the principal of and interest on the Bond, when due. The Ordinance requires that such schedule of rates and charges

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be changed and readjusted whenever necessary so that the aggregate of such rates and charges will be sufficient for such purposes.

6. Under existing statutes and court decisions, as presently written and applied, interest on the Bond is excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bond in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the interest on the Bond to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bond. We express no opinion herein regarding other tax consequences arising with respect to the Bond.

7. Under the Act, as presently written and applied, the Bond and the income thereon are exempt from taxation by the State of West Virginia pursuant to the provisions of Section 16-13-22f of the Code of West Virginia of 1931, as amended.

8. A portion of the proceeds of the Bond will be applied to the repayment, in full, including accrued interest and administrative fee, of the City's outstanding Sewer Revenue Bond, Series 1996 (the "Prior Bonds"), originally issued in the principal amount of \$473,500. Upon repayment of the Prior Bonds, the lien granted upon issuance of the Prior Bonds shall no longer exist.

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

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

Respectfully submitted,



GOODWIN & GOODWIN, LLP

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PARKERSBURG, WEST VIRGINIA 26101
304/485-2345

P. O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
304/372-2651

REPLY TO
Charleston

June 25, 1999

United States Department of Agriculture, Rural Development
298 Ragland Road
Beckley, WV 25801

Re: \$500,000 City of War, West Virginia, Sewer Revenue Bonds, Series 1999B
(United States Department of Agriculture)

Ladies and Gentlemen:

We are bond counsel to the City of War, West Virginia (the "City"), a municipal corporation located in McDowell County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the Letter of Conditions, dated December 17, 1997, as amended by Amendment No. 1 to Letter of Conditions dated May 24, 1999, including all schedules and exhibits attached thereto (collectively, the "Letter of Conditions"), from the United States Department of Agriculture, Rural Utilities Service ("RUS"), to the City, and (ii) the issuance of a sewer system revenue bond of the City, dated June 25, 1999 (the "Bond"), to be purchased by RUS in accordance with the provisions of the Letter of Conditions. The Bond is in the principal amount of \$500,000 and is issued in the form of one bond registered as to principal and interest to the United States of America (the "Government").

Interest on the Bond shall be paid on the unpaid principal balance of the Bond at four and one half percent (4.5%) per annum. Principal and interest on the Bond is payable in monthly installments commencing June 25, 2001, as set forth in the Bond. The final installment of principal and interest on the Bond shall be paid at the end of forty (40) years from the date interest begins to accrue on the Bond.

The Bond is issued for the purpose of financing a portion of the costs of acquiring, constructing and equipping certain additions, betterments and improvements for a new sewer system and paying certain issuance and other costs in connection therewith (the "Project").

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and paying certain issuance and other costs in connection therewith (the "Project").

We have also examined the applicable provisions of Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended (the "Act"), and the Bond has been authorized by a Bond Ordinance duly enacted by the City Council of the City ("Council") effective on April 19, 1999 (the "Ordinance"), pursuant to and under which Act and Ordinance the Bond is authorized and issued, and the Letter of Conditions has been issued. The Bond is subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Letter of Conditions.

In rendering this opinion, we have relied, in part, upon the opinion of William S. Winfrey, II, as the City's Counsel, for the proper enactment of the Sewage Treatment Ordinance, sewer rates, matters related to the valid existence of the City and other issues.

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

1. The Letter of Conditions has been duly accepted by and executed on behalf of the City and is a valid and binding special obligation of the City enforceable in accordance with the terms thereof.
2. The Letter of Conditions inures to the benefit of the Government and RUS and cannot be amended so as to affect adversely the rights of the Government or RUS or diminish the obligations of the City without the consent of the Government and RUS.
3. The City is a duly organized and presently existing municipal corporation of the State of West Virginia, with full power and authority to design the Project and to operate and maintain the System referred to in the Letter of Conditions and to issue and sell the Bond, all under the Act and other applicable provisions of law. The City has legally and validly created the Sanitary Board and has taken all legal action necessary to operate a sewer system.
4. The City has legally and effectively enacted the Ordinance and has satisfied all other necessary requirements in connection with the issuance and sale of the Bond. The Ordinance contains provisions and covenants substantially in the form required by the Letter of Conditions.
5. The Bond is a valid and legally enforceable special obligation of the City, payable from the Net Revenues of the System on a parity with the Issuer's Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund), issued in the principal amount of \$970,000, as referred to in the Ordinance, and secured by a parity lien on and pledge of the Net Revenues of said System, all in accordance with the terms of the Bond, the Ordinance and the Sewage Treatment Ordinance enacted on November 17, 1997, and has been duly issued and delivered to the Government. The City has reserved the right to issue additional bonds ranking on a parity with the Bond, as provided in the Ordinance. The City has certified, and an independent certified public accountant has verified, that the rates and charges generated by the Sewage Treatment Ordinance are sufficient to pay the principal of and interest on the Bond, when due. The Ordinance requires that such schedule of rates and charges be changed and readjusted whenever necessary so that the aggregate of such rates and charges will be sufficient for such purposes.

GOODWIN & GOODWIN, LLP

6. Under existing statutes and court decisions, as presently written and applied, interest on the Bond is excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bond in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the interest on the Bond to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bond. We express no opinion herein regarding other tax consequences arising with respect to the Bond.

7. Under the Act, as presently written and applied, the Bond and the income thereon are exempt from taxation by the State of West Virginia pursuant to the provisions of Section 16-13-22f of the Code of West Virginia of 1931, as amended.

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

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Goodwin & Goodwin, LLP".

GOODWIN & GOODWIN, LLP

LAW OFFICES
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P. O. BOX 2107
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304/485-2345

P. O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
304/372-2651

REPLY TO:

Charleston

June 25, 1999

The City of War
P.O. Box 280
War, West Virginia 24892

Re: \$500,000 City of War, West Virginia, Sewer Revenue Bonds, Series 1999B
(United States Department of Agriculture)

Gentlemen:

We have examined a record of proceedings relating to the issuance of the \$500,000 in aggregate principal amount of the City of War, West Virginia, Sewer Revenue Bond, Series 1999B (United States Department of Agriculture) (the "Bond"), issued by The City of War (the "City"), a municipal corporation, and the Non-Arbitrage Certificate executed by Thomas C. Hatcher, Mayor of the City on this date.

We are of the opinion that the facts, estimates and circumstances set forth in the Non-Arbitrage Certificate are sufficient to satisfy the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") to support the conclusion that the Bond is not an "arbitrage bond" as therein defined.

The City has general taxing powers to finance operations of or facilities of the nature of the System, and the City and all subordinate entities reasonably expect to issue less than \$5,000,000 of tax-exempt obligations during the calendar year in which the Bond is to be issued and have issued no other tax-exempt obligations during the current calendar year (or if the City has issued tax-exempt

GOODWIN & GOODWIN, LLP

The City of War
June 25, 1999
Page Two

obligations, the total of all bonds issued will be less than the \$5,000,000). Consequently, interest earnings with respect to the Bond in excess of the yield of the Bond are not subject to the rebate requirements of the Code.

No matters have come to our attention which in our opinion make unreasonable or incorrect the representations made in such certification.

Please be advised that this opinion is subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bond in order that the Bond not be an "arbitrage bond." Failure to comply with certain of such requirements may cause the interest on the Bond to be includable in gross income for federal income tax purposes retroactive to the date of issuance of the Bond. The City has covenanted to comply with all such requirements.

Respectfully submitted,

Goodwin + Goodwin, LLP

GOODWIN & GOODWIN, LLP



LAW OFFICES

WILLIAM S. WINFREY, II

1608 MAIN STREET WEST

POST OFFICE BOX 1150

PRINCETON, W. VA. 24740

TELEPHONE
304-487-1887

TELECOPIER
304-425-7340

FILE NO.

June 25, 1999

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

United States Department of Agriculture
Rural Development
298 Ragland Road
Beckley, West Virginia 25801

Jackson & Kelly PLLC
P.O. Box 553
Charleston, West Virginia 25322

Goodwin & Goodwin, LLP
P.O. Box 2107
Charleston, West Virginia 25328

Re: \$970,000 City of War, West Virginia
Sewer Revenue Bonds, Series 1999A
(West Virginia Infrastructure Fund); and

\$500,000 City of War, West Virginia
Sewer Revenue Bonds, Series 1999B
(United States Department of Agriculture)

Dear Ladies and Gentlemen:

I am counsel to the City of War, West Virginia (the "City"). I have reviewed various documents relating to the above-captioned bonds of the City (the "Bonds"), including the Loan Agreement by and between the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council and the City, dated June 25, 1999, the Letter of Conditions from the United States Department of Agriculture, Rural Utilities Service ("RUS") to the City, dated December 17, 1997, as amended by Amendment No. 1 dated May 24, 1999, an Ordinance duly enacted and adopted by the Council of the City (the "Council") and effective on April 19, 1999 (the "Ordinance"), a supplemental Resolution approved by the Council on May 24, 1999, and other documents relating to the Bonds. Terms used in this opinion and not otherwise defined herein shall have the same meanings as contained in the Loan Agreement, the Letter of Conditions and the Ordinance.

I am of the opinion that:

1. The City is a duly organized and presently existing municipal corporation, with full power and authority to acquire, construct and equip the Project and to operate and maintain the System referred

to in the Loan Agreement and the Letter of Conditions and to issue and sell the Bonds, all under the Ordinance and other applicable provisions of law.

2. The Loan Agreement has been duly authorized, executed and delivered by the City, and assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the City in accordance with its terms.

3. The Letter of Conditions has been duly authorized, accepted and executed by the City and constitutes a valid and binding agreement of the City in accordance with its terms.

4. The members of the Council were duly and properly elected or appointed and are thereby authorized to act on behalf of the City.

5. The Ordinance has been duly enacted by the Council and is in full force and effect.

6. The execution and delivery of the Bonds, the Loan Agreement and the Letter of Conditions and the consummation of the transactions contemplated by the Ordinance, the Loan Agreement and the Letter of Conditions and the carrying out of the terms thereof do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or any existing law, regulation, court order or consent decree to which the City is subject.

7. The City has received all necessary rights of way, permits, licenses, approvals and authorizations that are presently obtainable to acquire, construct, equip and finance the Project including a letter from the West Virginia Infrastructure and Jobs Development Council.

8. The City duly adopted a Sewage Treatment Ordinance on November 17, 1997, which remains in full force and effect, whereby the rates and charges for use of the System were established to meet the operation and maintenance costs of the System and the debt service on the Bonds. Under the terms of the Act, the City has full authority to establish rates for the System and to pledge the revenues from said rates to the payment of the Bonds.

9. 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 council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bonds or the collection or pledge of the revenues.

10. The City has received a Commission Order from the Public Service Commission of West Virginia dated June 4, 1999, granting approval of the financing, including the above referenced Bonds, granting a Certificate of Convenience and Necessity, and said Order is in full force and effect and the time for appeal has expired without appeal.

11. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and a

amount to protect the various interests of the City; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance, the Loan Agreement and the Letter of Conditions, and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "W. S. Winfrey, II".

William S. Winfrey, II

cc: City of War, West Virginia
Region I

LAW OFFICES

WILLIAM S. WINFREY, II

1608 MAIN STREET WEST

POST OFFICE BOX 1159

PRINCETON, W. VA. 24740

FILE NO.

TELEPHONE
304-487-1887

TELECOPIER
304-425-7340

June 25, 1999

Susan J. Riggs, Executive Secretary
West Virginia Infrastructure and Jobs Development Council
980 One Valley Square
Charleston, WV 25301

RE: City of War, West Virginia
1999 Sewer Bond

Dear Ms. Riggs:

This firm represents the City of War, West Virginia with regard to a proposed project to construct a sewer treatment and collection system for the City (the "Project"), and provide this final title opinion on behalf of City of War, West Virginia to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council (the "Council") with regard to the Infrastructure Fund financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the City of War, West Virginia is a duly created and existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the Division of Environmental Protection and Health Department.
2. That the City of War, West Virginia has obtained approval for all necessary permits and approvals for the construction of the Project.
3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Draper-Aden Engineering, the consulting engineers for the Project.

Susan J. Riggs, Executive Secretary
June 22, 1999
Page 2

4. That I have examined the records on file in the Office of the Clerk of the County Commission of McDowell County, West Virginia, the county in which the Project is to be located, and, in my opinion, the City of War, West Virginia has acquired legal title or such estate or interest in the necessary site components for the project sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed, excepted and subject to the following:

The following listed properties are being acquired by eminent domain and the necessary filings have been made (or will be made prior to closing) in the Office of the Clerk of the County Commission of McDowell, West Virginia to permit the City of War, West Virginia a right-of-entry for the purpose of construction, operation and maintenance of the subject facilities on the subject properties. The City of War, West Virginia's title thereto is defeasible in the event the City of War, West Virginia does not satisfy any resulting judgment and/or award in the proceedings for acquisition of said properties, and our certification is subject to the pending litigation.

Neugen (Wen), Dang and Thi	map 4	Parcels 69 and 69.2
Kolssar, Moses	Map 3	Parcel 120
	Map 4	Parcels 148, 168, 170
Muncy, Lawrence	Map 7	Parcel 118

5. That all deeds or other documents which have been acquired to date by the City of War, West Virginia have been duly recorded in the aforesaid Clerk's Office(s) in order to protect the legal title to and interest of the City of War, West Virginia.

Yours very truly,



William S. Winfrey, II

WSW,II/gmt
cc: Samme L. Gee, Esquire

WV MUNICIPAL BOND COMMISSION
812 Quarrier Street, Suite 300
Charleston, WV 25301
(304) 558-3971

REVISED NEW ISSUE REPORT FORM

Date of Report: June 25, 1999
(See Reverse for Instructions)

ISSUE: City of War, Sewer Revenue Bonds, Series 1999A
(West Virginia Infrastructure Fund)
ADDRESS: P.O. Box 280
War, WV 24892 COUNTY: McDowell
PURPOSE: New Money
OF ISSUE: Refunding Refunds issue dated: September 12, 1996
ISSUE DATE: June 25, 1999 CLOSING DATE: June 25, 1999
ISSUE AMOUNT: \$970,000 RATE: 0%
1ST DEBT SERVICE DUE: March 1, 2001 1ST PRINCIPAL DUE: March 1, 2001
1ST DEBT SERVICE AMOUNT: \$6,299.00 PAYING AGENT: Municipal
Bond Commission

BOND COUNSEL: Goodwin & Goodwin, LLP LENDER: WV Infrastructure & Jobs Devel. Coun.
Contact Person: W.K. Bragg, Jr. Contact Person: Susan J. Riggs
Phone 346-7000 Phone: 558-4607

REGISTRAR: McDowell County National Bank LENDER'S COUNSEL: Jackson & Kelly PLLC
Contact Person: David W. Falin Contact Person: Samme L. Gee
Phone: (304) 436-4112 Phone: 340-1318

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Thomas C. Hatcher
Position: Mayor
Phone: 875-3111

-----DEPOSITS TO MBC AT CLOSE:

By Wire
 Check

Accrued Interest:	\$	<u>0</u>
Capitalized Interest:	\$	<u>0</u>
Reserve Account:	\$	<u>0</u>
<input checked="" type="checkbox"/> Other: <u>CWSRF</u>		\$429,939.44 Payoff Sewer Revenue Bond, Series 1996

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:

By Wire
 Check
 IGT

To Escrow Trustee:	\$	<u>N/A</u>
To Issuer:	\$	<u>N/A</u>
To Cons. Invest. Fund:	\$	<u>N/A</u>
Other:	\$	<u> </u>

Notes: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS

REQUIRED: _____

TRANSFERS

REQUIRED: _____

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
6-24-98

Entered: June 4, 1998

CASE NO. 97-1452-S-CN

CITY OF WAR SEWER DEPARTMENT

Application for a certificate of
convenience and necessity for
construction operation of a waste-
water collection treatment plant.

RECOMMENDED DECISION

On October 27, 1997, the City of War, a municipal corporation, located in McDowell County, West Virginia, filed a duly executed application for a certificate of convenience and necessity to construct and operate a sewer treatment plant and collection system to serve approximately 486 customers. The project will consist of a 0.205 million gallon per day extended aeration wastewater treatment plant with aerobic sludge digestion, approximately 50,000 feet of gravity mains, 8,800 feet of river pipe and all related appurtenances. The project is estimated to cost \$7,700,000, and will be funded by a Small Cities Block grant of \$1,250,000, a Rural Utilities Service (RUS) grant of \$1,850,000, a West Virginia Infrastructure and Jobs Development Council (WVIJDC) grant of \$3,000,000, an RUS loan of \$500,000, and a WVIJDC loan in the amount of \$970,000, and local matching funds.

By a Notice of Filing entered October 28, 1997, the Public Service Commission required the Applicant, City of War, to give public legal notice of this filing by causing to be published a copy of the Notice of Filing once in a newspaper duly qualified by the Secretary of State, published and of general circulation in the service territory of the Applicant and to make due return to the Commission of said publication. The Notice of Filing contained the proposed rates to be charged for this new sewer service and made provision for the filing of protests with the Commission within thirty (30) days of publication. In the absence of protest, the Notice stated that the Commission may waive formal hearing and grant this application based on the evidence submitted with the application and its review thereof.

By a Commission Referral Order entered November 24, 1997, this matter was referred to the Division of Administrative Law Judges for further proceedings with a decision due date of May 25, 1998.

On December 17, 1997, the Staff of the Public Service Commission filed a Final Joint Staff Memorandum in this matter. Staff pointed out that the identified funding package appeared to be short by \$130,000, and that there were numerous important documents that had not yet been filed for Staff review.

On January 9, 1998, the Applicant filed several documents requested by Staff in the Final Joint Staff Memorandum, including an Affidavit of Publication demonstrating publication of the Notice of Filing on November 6, 1997, in The Welch Daily News, all in compliance with the Commission's Order of October 28, 1997. As of the date of this Recommended Decision, no letters of protest or objection to this application have been filed with the Commission.

On February 19, 1998, the Applicant filed a Rule 42 Exhibit containing the expected on-going expenses and revenues of this project when completed.

On May 13, 1998, the Applicant filed an unexecuted water service termination agreement for proposed use between the City of War and War Water Works, Inc., the area's public water utility, for review and approval by the Public Service Commission.

Pursuant to a motion filed by Commission Staff, and by an Order entered on May 19, 1998, the Public Service Commission extended the decision due date in this matter until June 5, 1998.

On May 27, 1998, Commission Staff filed its Fourth Joint Staff Memorandum in this matter and recommended approval of the application filed herein. Staff pointed out that the City of War currently does not have a treatment plant and at least 75% of the households to be served by this project discharge untreated sewage directly into the Dry Fork of Tug River. Less than 5% of the City's population is served by properly functioning septic systems. The collection and treatment facilities to be constructed in this project are required by a formal consent decree entered into on October 1, 1993, between the Applicant and the Attorney General of West Virginia. Clearly, the public health and welfare require this project and need has been adequately demonstrated.

The cost of this project has been estimated at \$7,699,366, and will be approximately 80% grant funded. Debt service on the remaining \$1,470,000 in loans and the estimated annual operations and maintenance costs of \$98,800 are reasonable. All funding sources have been confirmed by Staff. The original plans and specifications for this project have been approved by the West Virginia Division of Environmental Protection, by letter dated April 7, 1998. Commission Staff's review of the project plans did not reveal any conflicts with Public Service Commission rules and regulations concerning engineering requirements.

Under the terms of the 1993 consent decree, the City began collecting a monthly fee of \$10.00 from each prospective customer of this project to be used to pay for engineering, legal and administrative services related to this sewer project. On November 17, 1997, the City of War reenacted a sewer rate ordinance increasing the sewer fee, to become effective sixty (60) days after actual construction begins on the new sewer system. The Commission initiated a municipal appeal concerning this rate ordinance and by a Recommended Decision entered in Case No. 97-1679-S-MA, on April 8, 1998, which became a final order of the Commission on April 28, 1998, the Staff-recommended rates and charges were approved for use by the City of War, to be effective sixty (60) days after this project has been under actual construction as certified by the project engineer. This effective

date will allow the City of War to generate the required local matching funds. The City has provided for a waiver of the \$100.00 preconstruction tap fee for those residents who have paid the Court-ordered \$10.00 monthly sewer fee.

The Staff-recommended cash flow analysis from the municipal appeal case was adopted by Staff for use in this certificate case and provides for resulting debt service coverage of 135.62%, which is adequate. An annual cash flow surplus of approximately \$9,000 is estimated to result from operation of this system.

Staff recommended that review of the water service termination agreement filed May 13, 1998, be made the subject of a separate case.

Consequently, in light of the Staff recommendation and the absence of protest, this application will be approved and a certificate of convenience and necessity for the project described in the application will be granted to the City of War.

FINDINGS OF FACT

1. On October 27, 1997, the City of War, a municipal corporation, located in McDowell County, West Virginia, filed a duly executed application for a certificate of convenience and necessity to construct and operate a sewer treatment plant and collection system to serve approximately 486 customers. The project will consist of a 0.205 million gallon per day extended aeration wastewater treatment plant with aerobic sludge digestion, approximately 50,000 feet of gravity mains, 8,800 feet of river pipe and all related appurtenances. (See, Application filed October 27, 1997).

2. Pursuant to a Notice of Filing entered October 28, 1997, the Applicant caused to be published on November 6, 1997, a copy of the Notice of Filing in The Welch Daily News, a newspaper duly qualified by the Secretary of State, published and of general circulation in McDowell County, West Virginia. As of the date of this Recommended Decision, no letters of protest or objection to this application have been filed with the Commission. (See, Affidavit of Publication filed January 9, 1998; Commission case file generally).

3. The Applicant, City of War, does not currently operate a sewer treatment facility and at least 75% of the households to be served by this project discharge untreated sewage directly into the Dry Fork of Tug River. This project is also required by a formal consent decree entered on October 1, 1993. (See, Fourth Joint Staff Memorandum filed May 27, 1998).

4. The City of War has been issued Water Pollution Control Permit No. WV0040371 for this project. (See, Permit issued June 17, 1994, filed herein on May 20, 1998).

5. The original plans and specifications for this project have been approved by the State Division of Environmental Protection and reveal no conflicts with Public Service Commission rules and regulations. (See,

letter filed May 20, 1998; Fourth Joint Staff Memorandum filed May 27, 1998).

6. The cost of this project has been estimated at \$7,699,366, to be funded by a West Virginia Infrastructure and Jobs Development Council grant of \$3,000,000, and a WVIJDC loan of \$970,000, at 0% interest for 40 years; a Rural Utilities Service grant of \$1,850,000, and an RUS loan of \$500,000, at 4.5% interest for 40 years; a Small Cities Block grant of \$1,250,000; and local matching funds of \$130,000. All funding has been confirmed by Commission Staff. (See, Fourth Joint Staff Memorandum filed May 27, 1998).

7. The operation and maintenance costs of this system are estimated at \$98,800 per year and are reasonable for a system of this design and size. (See, Fourth Joint Staff Memorandum filed May 27, 1998).

8. Pursuant to a municipal sewer rate ordinance enacted by the City of War on November 17, 1997, and a municipal appeal initiated by the Commission on December 29, 1997, a Recommended Decision was entered April 8, 1998, which became final April 28, 1998, approving sufficient rates to support the operation of this system. (See, Fourth Joint Staff Memorandum filed May 27, 1998; Recommended Decision entered in Case No. 97-1679-S-MA, April 8, 1998, which became final April 28, 1998).

9. The Staff recommended cash flow analysis filed in this matter demonstrates debt service coverage of 135.62% and a resulting annual cash flow surplus of approximately \$9,000, which is adequate and not excessive. (See, Fourth Joint Staff Memorandum filed May 27, 1998).

CONCLUSIONS OF LAW

1. The sewer construction project described in the application filed herein is required and necessary to alleviate the City of War's on-going violation of water pollution laws and for general public health.

2. As currently designed and funded, this project is economically feasible and, therefore, convenient.

3. Under the facts and circumstances of this case and the recommendations of Commission Staff, it is reasonable to approve the application filed October 27, 1997, by the City of War, and to issue a certificate of convenience and necessity for the sewer construction project described therein.

4. It is also reasonable to defer review and approval of the proposed water service termination agreement filed by the City of War on May 13, 1998, and to make that process the subject of a separate case before the Public Service Commission.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the City of War on October 27, 1997, shall be, and hereby is, approved, and that a certificate of convenience and necessity shall be issued for the

construction and operation of the sanitary sewer system described in said application and this Recommended Decision.

IT IS FURTHER ORDERED that the funding package of grants and loans proposed for this project shall be approved for acceptance and use by the City of War as follows: a West Virginia Infrastructure and Jobs Development Council grant of \$3,000,000, a WVIJDC loan of \$970,000, at 0% interest for 40 years; a Rural Utilities Service grant of \$1,850,000, and an RUS loan of \$500,000, at 4.5% interest for 40 years; a Small Cities Block grant of \$1,250,000; and local matching funds of \$130,000.

IT IS FURTHER ORDERED that, should the design, scope, costs or extent of service territory of this project change, the Applicant shall notify the Public Service Commission of such change and seek subsequent review and approval of such change.

IT IS FURTHER ORDERED that the proposed water service termination agreement filed by the Applicant on May 13, 1998, shall not be approved as part of this case, but shall be refiled by the Commission's Executive Secretary under its own case number and distributed for separate processing by Commission Staff.

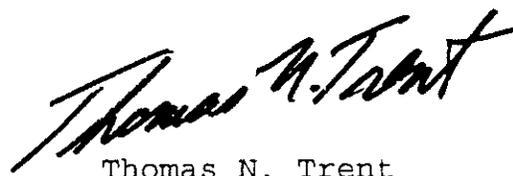
IT IS FURTHER ORDERED that this matter shall be removed from the Commission's docket of open cases.

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

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

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

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


Thomas N. Trent
Administrative Law Judge

TNT:dfs

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 4th day of June, 1999.

CASE NO. 97-1452-S-CN (Reopened)

CITY OF WAR SEWER DEPARTMENT
Application for a certificate of convenience
and necessity for construction of a waste water
collection treatment plant.

COMMISSION ORDER

By Recommended Decision entered June 4, 1998, which became a final order of the Commission on June 24, 1998, the Commission granted the City of War Sewer Department's (War) application for a certificate of convenience and necessity to construct and operate a sewer treatment plant and collection system to serve approximately 486 customers. The certificated project will consist of a 0.205 million gallon per day (GPD) extended aeration wastewater treatment plant with aerobic sludge digestion, approximately 50,000 feet of gravity mains, 8,800 feet of river pipe and related appurtenances. The Commission also approved \$7,700,000.00 in proposed financing for the certificated project as follows: a \$3,000,000.00 grant from the West Virginia Infrastructure and Jobs Development Council (WVIJDC); a \$970,000.00 loan from the WVIJDC, at 0% interest for 40 years; a \$1,850,000.00 grant from the Rural Utilities Service (RUS); a \$500,000.00 RUS loan, at 4.5% interest for 40 years; a \$1,250,000.00 Small Cities Block Grant; and \$130,000.00 in local matching funds.

On March 10, 1999, War filed a petition to reopen this proceeding for the purpose of obtaining Commission approval of additional funding for the certificated project in order to cover a \$496,271.00 cost overrun. According to War, the overrun will be paid for by an additional \$200,000.00 grant from the WVIJDC, and an additional \$296,271.00 grant from the U.S. Department of Agriculture's RUS. Attached to War's petition was a copy of the WVIJDC's letter of commitment. War further advised that a copy of the RUS's amended letter of conditions was forthcoming but requested expedited approval of the additional financing, contingent upon War receiving the amended letter of conditions from RUS, in view of the fact that bids for the project expire in mid-April 1999.

On March 16, 1999, Commission Staff (Staff) filed an Initial and Final Joint Staff Memorandum recommending that the Commission should reopen this proceeding and retain it for processing. Staff further recommended that, following War's submission of a letter of commitment from RUS, its petition for approval of additional funding should be approved.

On May 19, 1999, War filed a copy, via telefacsimile, of RUS's budget showing an additional obligation of grant funds to complete construction of the certificated project. War further advised that an amended Letter of Conditions from RUS would be delivered to it on May 24, 1999, and would be furnished to the Commission immediately thereafter. War further advised that approval of the certificate by June 1, 1999, was essential.

On June 1, 1999, War filed Amendment No. 1 to Letter of Conditions, provided by RUS to the Mayor of the City of War. Amendment No. 1 advises that RUS commits to total funding of \$3,450,000.00, which consists of the original \$1,850,000.00 RUS grant, \$500,000.00 RUS loan, and a subsequent \$1,100,000.00 RUS grant. In addition, RUS states that the local contribution has been reduced from \$130,000.00 to \$70,000.00.

On June 2, 1999, Staff filed a Further Final Joint Staff Memorandum recommending that the Commission should approve the revised funding package for the certificated project before June 7, 1999, noting that the bids War has received on the project expire on June 11, 1999. Staff further noted that the total cost of the certificated project has increased by \$1,240,134.00, and that the proposed financing has increased by \$1,240,000.00.

UPON CONSIDERATION WHEREOF, the Commission concludes that it is reasonable grant War's petition to reopen this proceeding and to approve additional funding for the certificated project, consisting of an additional \$200,000.00 grant from the WVIJDC, and an additional \$1,100,000.00 grant from the U.S. Department of Agriculture's RUS. Since the additional funding is in the form of grants, the rates and charges previously approved by the Commission will not be affected. In addition, the Commission approves the reduction in the local contribution toward the certificated project from \$130,000.00 to \$70,000.00.

ORDER

IT IS, THEREFORE, ORDERED that the City of War Sewer Department's petition to reopen this proceeding, filed with the Commission on March 10, 1999, should be, and hereby is, granted.

IT IS FURTHER ORDERED that additional funding for the certificated project, consisting of an additional \$200,000.00 grant from the WVIJDC, and an additional \$1,100,000.00 grant from the U.S. Department of Agriculture's RUS, is hereby approved.

IT IS FURTHER ORDERED that the reduction in the local contribution toward the certificated project from \$130,000.00 to \$70,000.00, is hereby approved.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

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

A True Copy, Teste:



Sandra Squire
Executive Secretary

971452c.wpd
PWP/pwp



STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY

1201 DUNBAR AVENUE
 DUNBAR, WV 25004

Telephone (304) 558-3612
 Telecopier (304) 558-0299

March 7, 1995

The Honorable Wesley Miller, Jr.
 Mayor, City of War
 P.O. Box 1028
 War WV 24892

PRELIMINARY APPLICATION - CITY OF WAR (SEWER)

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Preliminary Application for the above-referenced project and has determined that the project is technically and financially feasible within the guidelines of the Act.

The Council recommends that, within the next twelve months, the City of War seek the maximum amounts from the first four sources listed below and, at the end of the twelve-month period, the City submit a written status report to the Council for the Council's consideration of funding from the Infrastructure Fund if additional funding is needed:

Rural Economic & Community Development	\$3,548,853	(Pending)
US Economic Development Administration	1,000,000	(Pending)
Appalachian Regional Commission	1,000,000	(Pending)
HUD/Small Cities Block Grant	750,000*	(Pending)
Infrastructure Fund	500,000	(Pending)
	<u>\$6,798,853</u>	

*The City of War could apply for SCBG funding in such amount as permitted by the 1995 program design.

If you have any questions concerning this decision, please contact Daniel Yonkosky, Director of the Water Development Authority, who serves as chairman of the Council's Funding Committee.

Daniel B. Yonkosky

for RUSSELL L. ISAACS, CHAIRMAN
 WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

c Jim Anderson, Rural Economic & Community Development Service
 R. Byron Davis, US Economic Development Administration
 Fred Cutlip, West Virginia Development Office



West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman
St. Albans
James L. Harrison, Sr., Vice Chairman
Princeton
Lloyd P. Adams, P.E.
Wheeling
Sheirl L. Fletcher
Morgantown

1320 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire
Executive Secretary

October 2, 1997

The Honorable Tom Hatcher
Mayor, City of War
P. O. Box 1028
War, WV 24892

Re: Binding Commitment Letter
Wastewater Treatment Plant and Collection System Project 95S-012

Dear Mayor Hatcher:

The West Virginia Infrastructure and Jobs Development Council (Council) provides this binding offer of a loan of approximately \$970,000 and a grant of approximately \$3,000,000 for the City of War's (City) proposed project to construct a wastewater treatment plant and collection system (Project). The loan and grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final loan and grant amounts will be established after the City has received bids for the Project. The Council has set aside moneys in the Infrastructure Fund to make this loan and grant upon the City's compliance with the program requirements. The loan and grant agreements will be between the West Virginia Water Development Authority (Authority), who is the administrator of the Infrastructure Fund, acting on behalf of the Council, and the City.

This commitment is contingent upon the City meeting the following schedule:

- a. Plans and specifications for the Project must be submitted to the Office of Water Resources no later than October 3, 1997.
- b. A filing for a certificate of convenience and necessity must be submitted to the Public Service Commission no later than October 15, 1997.
- c. Advertise for construction bids no later than April 7, 1998.
- d. The loan must be closed no later than July 1, 1998.

The Council has the option of withdrawing this funding commitment if any of the above schedule dates are not met. The Council may, when justifiable circumstances occur, offer to extend the schedule dates. Any decision to extend the schedule dates is at the sole discretion of the Council. Please be aware that the dollars committed to the Project must be expended no later than December, 1999.

The Honorable Tom Hatcher
October 2, 1997
Page 2

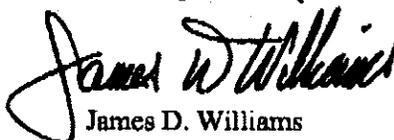
If the City becomes aware that it will not meet one or more of the above schedule dates, the City should immediately notify the Council of this fact and the circumstances which have caused the City to be unable to conform to the schedule. In addition, please immediately notify the Council if any of the other dates on the attached schedule have not, or will not be met.

The Authority will enter into loan and grant agreements with the City following receipt of the completed Schedule B (the form of which is attached hereto); a final, nonappealable order from the Public Service Commission authorizing construction of the Project; evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; requisite bond-related documents and opinions in a form and substance satisfactory to the Authority and the Council and any other documents requested by the Council. Following execution of the agreements, the Council will establish a closing date.

No statements or representations made before or after the issuance of this Binding Commitment Letter by any person, member of the Council, or agent or employee of the Authority shall be construed as approval to alter or amend this Commitment, as all such amendments or alterations shall only be made in writing after approval of the Council.

If the City has any questions regarding this Commitment, please contact Susan J. Riggs at the above-referenced telephone number.

Sincerely,


James D. Williams

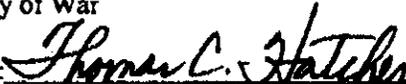
JDW/bh

Attachments

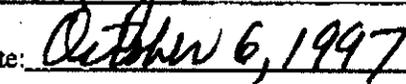
cc: David Cole
Matthew D. Stolte
William S. Winfrey, Esquire

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return one to the Authority at 180 Association Drive, Charleston, WV 25311-1571, and one to the Council.

City of War

By: 

Its: 

Date: 

The Honorable Tom Hatcher
October 2, 1997
Page 2

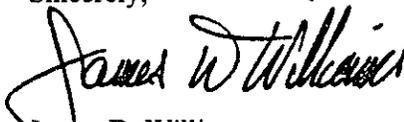
If the City becomes aware that it will not meet one or more of the above schedule dates, the City should immediately notify the Council of this fact and the circumstances which have caused the City to be unable to conform to the schedule. In addition, please immediately notify the Council if any of the other dates on the attached schedule have not, or will not be met.

The Authority will enter into loan and grant agreements with the City following receipt of the completed Schedule B (the form of which is attached hereto); a final, nonappealable order from the Public Service Commission authorizing construction of the Project; evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; requisite bond-related documents and opinions in a form and substance satisfactory to the Authority and the Council and any other documents requested by the Council. Following execution of the agreements, the Council will establish a closing date.

No statements or representations made before or after the issuance of this Binding Commitment Letter by any person, member of the Council, or agent or employee of the Authority shall be construed as approval to alter or amend this Commitment, as all such amendments or alterations shall only be made in writing after approval of the Council.

If the City has any questions regarding this Commitment, please contact Susan J. Riggs at the above-referenced telephone number.

Sincerely,



James D. Williams

JDW/bh

Attachments

cc: David Cole
Matthew D. Stolte
William S. Winfrey, Esquire

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return one to the Authority at 180 Association Drive, Charleston, WV 25311-1571, and one to the Council.

City of War

By: _____

Its: _____

Date: _____

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

City of War
Wastewater Treatment Plant and
Collection System
95S-012
October 2, 1997

SCHEDULE A

A. Approximate Amount: \$ 970,000 - Loan
\$3,000,000 - Grant

B. If Loan:

1. Maturity Date: 40 years from date of loan closing
2. Loan Advancement Date(s): Monthly, upon receipt of proper requisition, after complete advancement of the Small Cities Block Grant, and concurrently with the USDA Rural Utilities Service loan.
3. Interest Rate: 0%.
4. Debt Service Commencement Date: The quarter following completion of construction, which date must be identified prior to loan closing.
5. Special Conditions (if any):

C. If Grant:

1. a. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after complete advancement of the Small Cities Block grant and the loan funds.
- b. Monthly percentage: None specified.
2. Special Conditions (if any)

NOTICE: The terms set forth above are subject to change following the Governmental Agency's receipt of construction bids.

D. Other Funding Sources:

1. Small Cities Block Grant
 - a. Amount: \$1,250,000
2. USDA Rural Utilities Service Loan
 - a. Amount: \$ 500,000
3. USDA Rural Utilities Service Grant
 - a. Amount: \$1,850,000

E. Proposed User Rates:

Average: \$30.00/4500 gallons



West Virginia Infrastructure & Jobs Development Council

Public Members:

- James D. Williams, Chairman
St. Albans
- James L. Harrison, Sr., Vice Chairman
Princeton
- Lloyd P. Adams, PE.
Wheeling
- Sheirl L. Fletcher
Morgantown

980 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire
Executive Secretary

March 3, 1999 **RECEIVED**

MAR - 4 1999

REGION I PDC

The Honorable Tom Hatcher
Mayor, City of War
P.O. Box 280
War, WV 24892

Re: Wastewater Treatment and Collection System Project 95S-012

Dear Mayor Hatcher:

The West Virginia Infrastructure and Jobs Development Council (the "Council"), at its March 3, 1999 meeting, reviewed the City of War's (the "City") request for additional funding necessary to fund a cost overrun due to bids higher than the budget estimate for its wastewater treatment plant and collection system project (the "Project"). By letter dated October 2, 1997 the Council provided to the City a binding commitment of an Infrastructure Fund loan of \$970,000, and an Infrastructure Fund grant of \$3,000,000. The City's request states that it needs additional funds of \$496,271 due to the cost overrun.

The Council has reviewed the funding previously proposed for the Project in order to determine how the cost overrun can be funded without increasing the City's proposed customer rates. The Council understands that discussions between the Office of Water Resources and Draper Aden Associates have resulted in a few changes to the Project and a reduction in the amount of additional funds needed to approximately \$400,000. Based upon this information, the Council has agreed to provide the City additional Infrastructure Fund grant assistance of \$200,000. The Council understands that USDA Rural Utilities Service has grant funds available to fund the remaining amount of the bid overrun. The enclosed Schedule A details the terms and conditions of the project financing as now revised.

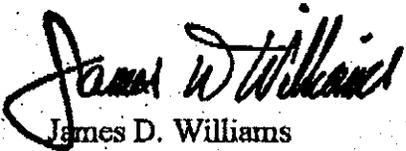
The Honorable Tom Hatcher

March 3, 1999

Page 2

All terms and conditions of the Council's October 2, 1997 binding commitment letter remains in force. If you have any questions regarding this matter, please contact Susan J. Riggs at the above telephone number.

Sincerely,



James D. Williams

JDW/tb

Enclosure

cc: Matthew Stolte
David Cole
Randy Plum
Debbie Legg

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

City of War
 Wastewater Treatment Plant and
 Collection System
 95S-012
 March 3, 1999

**REVISED
 SCHEDULE A**

- A. Approximate Amount: \$ 970,000 - Loan
 \$3,200,000 - Grant
- B. If Loan:
1. Maturity Date: 40 years from date of loan closing
 2. Loan Advancement Date(s): Monthly, upon receipt of proper requisition, after complete advancement of the Small Cities Block Grant, and concurrently with the USDA Rural Utilities Service loan.
 3. Interest Rate: 0%.
 4. Debt Service Commencement Date: The quarter following completion of construction, which date must be identified prior to loan closing.
- C. If Grant:
1. a. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after complete advancement of the Small Cities Block grant and the loan funds.
 - b. Monthly percentage: None specified.
- NOTICE: The terms set forth above are subject to change following the Governmental Agency's receipt of construction bids.
- D. Other Funding Sources:
1. Small Cities Block Grant
 - a. Amount: \$1,250,000
 2. USDA Rural Utilities Service Loan
 - a. Amount: \$ 500,000
 3. USDA Rural Utilities Service Grant
 - a. Amount: approximately \$2,050,000
- E. Proposed User Rates:
- Average: \$30.00/4500 gallons

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF WAR
SEWER REVENUE BOND,
SERIES 1999A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1
\$970,000.00

Date: June 25, 1999

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF WAR, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia in McDowell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the order of the West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of Nine Hundred Seventy Thousand and 00/100 Dollars (\$970,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference. This Bond is non interest bearing. Principal on the Bond is payable in quarterly installments commencing March 1, 2001, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The final installment of principal shall be paid at the end of forth (40) years from the date hereof and shall be in an amount of outstanding principal due on the Bond at said date. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal on this Bond are payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of McDowell County National Bank in Welch, Welch, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole at par, but only upon thirty (30) days prior written notice to the Authority and the West Virginia Infrastructure and Jobs Development Council ("IJDC") and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and between the Issuer and the Authority, on behalf of the IJDC.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain extensions, additions, betterments and improvements to the public sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The sewer system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is herein called the "System". This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective April 19, 1999 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bond under the Ordinance.

This Bond is payable only from and secured by a parity pledge of the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bond (the "Series 1999A Bonds Reserve Account") and unexpended proceeds of the Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1999A Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System and to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond, the Series 1999B Bonds, as hereinafter defined, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bond, provided however, that so long as there exists in the Series 1999A Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding on a parity with the Bond, including the Series 1999B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Issuer has entered into certain further covenants with the registered owners of the Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

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

writing.

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

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

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

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

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

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1999B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED JUNE 25, 1999, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$500,000 (THE "SERIES 1999B BONDS").

IN WITNESS WHEREOF, THE CITY OF WAR has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Acting Recorder and has caused this Bond to be dated June 25, 1999.

THE CITY OF WAR, WEST VIRGINIA

[SEAL]

By: Thomas C. Hatcher
Mayor

ATTEST:

Manuel Collins
Acting Recorder

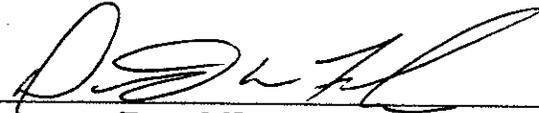
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1999A Bond described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: June 25, 1999

MCDOWELL COUNTY NATIONAL BANK IN WELCH

By:



Trust Officer

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$447,244.00	6/25/99	(6) \$ _____	
(2) \$ _____		(7) \$ _____	
(3) \$ _____		(8) \$ _____	
(4) \$ _____		(9) \$ _____	
(5) \$ _____		(10) \$ _____	
		TOTAL \$ _____	

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
 40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/1999	-	-	-
12/01/1999	-	-	-
3/01/2000	-	-	-
6/01/2000	-	-	-
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	6,299.00	-	6,299.00
6/01/2001	6,299.00	-	6,299.00
9/01/2001	6,299.00	-	6,299.00
12/01/2001	6,299.00	-	6,299.00
3/01/2002	6,299.00	-	6,299.00
6/01/2002	6,299.00	-	6,299.00
9/01/2002	6,299.00	-	6,299.00
12/01/2002	6,299.00	-	6,299.00
3/01/2003	6,299.00	-	6,299.00
6/01/2003	6,299.00	-	6,299.00
9/01/2003	6,299.00	-	6,299.00
12/01/2003	6,299.00	-	6,299.00
3/01/2004	6,299.00	-	6,299.00
6/01/2004	6,299.00	-	6,299.00
9/01/2004	6,299.00	-	6,299.00
12/01/2004	6,299.00	-	6,299.00
3/01/2005	6,299.00	-	6,299.00
6/01/2005	6,299.00	-	6,299.00
9/01/2005	6,299.00	-	6,299.00
12/01/2005	6,299.00	-	6,299.00
3/01/2006	6,299.00	-	6,299.00
6/01/2006	6,299.00	-	6,299.00
9/01/2006	6,299.00	-	6,299.00
12/01/2006	6,299.00	-	6,299.00
3/01/2007	6,299.00	-	6,299.00
6/01/2007	6,299.00	-	6,299.00
9/01/2007	6,299.00	-	6,299.00
12/01/2007	6,299.00	-	6,299.00
3/01/2008	6,299.00	-	6,299.00
6/01/2008	6,299.00	-	6,299.00
9/01/2008	6,299.00	-	6,299.00
12/01/2008	6,299.00	-	6,299.00
3/01/2009	6,299.00	-	6,299.00
6/01/2009	6,299.00	-	6,299.00
9/01/2009	6,299.00	-	6,299.00
12/01/2009	6,299.00	-	6,299.00
3/01/2010	6,299.00	-	6,299.00
6/01/2010	6,299.00	-	6,299.00
9/01/2010	6,299.00	-	6,299.00
12/01/2010	6,299.00	-	6,299.00
3/01/2011	6,299.00	-	6,299.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
 40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2011	6,299.00	-	6,299.00
9/01/2011	6,299.00	-	6,299.00
12/01/2011	6,299.00	-	6,299.00
3/01/2012	6,299.00	-	6,299.00
6/01/2012	6,299.00	-	6,299.00
9/01/2012	6,299.00	-	6,299.00
12/01/2012	6,299.00	-	6,299.00
3/01/2013	6,299.00	-	6,299.00
6/01/2013	6,299.00	-	6,299.00
9/01/2013	6,299.00	-	6,299.00
12/01/2013	6,299.00	-	6,299.00
3/01/2014	6,299.00	-	6,299.00
6/01/2014	6,299.00	-	6,299.00
9/01/2014	6,299.00	-	6,299.00
12/01/2014	6,299.00	-	6,299.00
3/01/2015	6,299.00	-	6,299.00
6/01/2015	6,299.00	-	6,299.00
9/01/2015	6,299.00	-	6,299.00
12/01/2015	6,299.00	-	6,299.00
3/01/2016	6,299.00	-	6,299.00
6/01/2016	6,299.00	-	6,299.00
9/01/2016	6,299.00	-	6,299.00
12/01/2016	6,299.00	-	6,299.00
3/01/2017	6,299.00	-	6,299.00
6/01/2017	6,299.00	-	6,299.00
9/01/2017	6,299.00	-	6,299.00
12/01/2017	6,299.00	-	6,299.00
3/01/2018	6,299.00	-	6,299.00
6/01/2018	6,299.00	-	6,299.00
9/01/2018	6,299.00	-	6,299.00
12/01/2018	6,299.00	-	6,299.00
3/01/2019	6,299.00	-	6,299.00
6/01/2019	6,299.00	-	6,299.00
9/01/2019	6,299.00	-	6,299.00
12/01/2019	6,299.00	-	6,299.00
3/01/2020	6,299.00	-	6,299.00
6/01/2020	6,299.00	-	6,299.00
9/01/2020	6,299.00	-	6,299.00
12/01/2020	6,299.00	-	6,299.00
3/01/2021	6,299.00	-	6,299.00
6/01/2021	6,299.00	-	6,299.00
9/01/2021	6,299.00	-	6,299.00
12/01/2021	6,299.00	-	6,299.00
3/01/2022	6,299.00	-	6,299.00
6/01/2022	6,299.00	-	6,299.00
9/01/2022	6,299.00	-	6,299.00
12/01/2022	6,299.00	-	6,299.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+i
3/01/2023	6,299.00	-	6,299.00
6/01/2023	6,299.00	-	6,299.00
9/01/2023	6,299.00	-	6,299.00
12/01/2023	6,299.00	-	6,299.00
3/01/2024	6,299.00	-	6,299.00
6/01/2024	6,299.00	-	6,299.00
9/01/2024	6,299.00	-	6,299.00
12/01/2024	6,299.00	-	6,299.00
3/01/2025	6,299.00	-	6,299.00
6/01/2025	6,299.00	-	6,299.00
9/01/2025	6,299.00	-	6,299.00
12/01/2025	6,299.00	-	6,299.00
3/01/2026	6,299.00	-	6,299.00
6/01/2026	6,299.00	-	6,299.00
9/01/2026	6,299.00	-	6,299.00
12/01/2026	6,299.00	-	6,299.00
3/01/2027	6,299.00	-	6,299.00
6/01/2027	6,299.00	-	6,299.00
9/01/2027	6,299.00	-	6,299.00
12/01/2027	6,299.00	-	6,299.00
3/01/2028	6,298.00	-	6,298.00
6/01/2028	6,298.00	-	6,298.00
9/01/2028	6,298.00	-	6,298.00
12/01/2028	6,298.00	-	6,298.00
3/01/2029	6,298.00	-	6,298.00
6/01/2029	6,298.00	-	6,298.00
9/01/2029	6,298.00	-	6,298.00
12/01/2029	6,298.00	-	6,298.00
3/01/2030	6,298.00	-	6,298.00
6/01/2030	6,298.00	-	6,298.00
9/01/2030	6,298.00	-	6,298.00
12/01/2030	6,298.00	-	6,298.00
3/01/2031	6,298.00	-	6,298.00
6/01/2031	6,298.00	-	6,298.00
9/01/2031	6,298.00	-	6,298.00
12/01/2031	6,298.00	-	6,298.00
3/01/2032	6,298.00	-	6,298.00
6/01/2032	6,298.00	-	6,298.00
9/01/2032	6,298.00	-	6,298.00
12/01/2032	6,298.00	-	6,298.00
3/01/2033	6,298.00	-	6,298.00
6/01/2033	6,298.00	-	6,298.00
9/01/2033	6,298.00	-	6,298.00
12/01/2033	6,298.00	-	6,298.00
3/01/2034	6,298.00	-	6,298.00
6/01/2034	6,298.00	-	6,298.00
9/01/2034	6,298.00	-	6,298.00

City of War, West Virginia
Infrastructure Fund Loan of \$970,000
40 Years, 0% Interest Rate

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
12/01/2034	6,298.00	-	6,298.00
3/01/2035	6,298.00	-	6,298.00
6/01/2035	6,298.00	-	6,298.00
9/01/2035	6,298.00	-	6,298.00
12/01/2035	6,298.00	-	6,298.00
3/01/2036	6,298.00	-	6,298.00
6/01/2036	6,298.00	-	6,298.00
9/01/2036	6,298.00	-	6,298.00
12/01/2036	6,298.00	-	6,298.00
3/01/2037	6,298.00	-	6,298.00
6/01/2037	6,298.00	-	6,298.00
9/01/2037	6,298.00	-	6,298.00
12/01/2037	6,298.00	-	6,298.00
3/01/2038	6,298.00	-	6,298.00
6/01/2038	6,298.00	-	6,298.00
9/01/2038	6,298.00	-	6,298.00
12/01/2038	6,298.00	-	6,298.00
3/01/2039	6,298.00	-	6,298.00
6/01/2039	6,298.00	-	6,298.00
Total	970,000.00	-	970,000.00

YIELD STATISTICS

Bond Year Dollars.....	\$20,223.88
Average Life.....	20.849 Years
Average Coupon.....	-
Net Interest Cost (NIC).....	-
True Interest Cost (TIC).....	1.85E-10
Bond Yield for Arbitrage Purposes.....	1.85E-10
All Inclusive Cost (AIC).....	1.85E-10

IRS FORM 8038

Net Interest Cost.....	-
Weighted Average Maturity.....	20.849 Years

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and Transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration of the within Bond of said Issuer with full power of substitution in the premises.

Dated: _____, 19__

SPECIMEN

(Assignor)

Witnessed in the presence of:

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF WAR
SEWER REVENUE BOND,
SERIES 1999B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1
\$500,000

Date: June 25, 1999

FOR VALUE RECEIVED, THE CITY OF WAR, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia in McDowell County of said State (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government") or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Five Hundred Thousand and 00/100 Dollars (\$500,000), plus interest on the unpaid principal balance at the rate of four and one half percent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Series 1999B Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,295.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Series 1999B 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 of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Series 1999B Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Series 1999B Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Series 1999B Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Series 1999B Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government

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

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

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

This Series 1999B Bond, together with the Issuer's Sewer Revenue Bonds, Series 1999A (West Virginia Infrastructure Fund) (the "Series 1999A Bonds") and any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing a portion of the costs of construction of improvements to a sewer system (the "System") of the Issuer, are 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 Series 1999B Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Series 1999B 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 McDowell County National Bank in Welch, Welch, West Virginia, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Bond Ordinance enacted by the Issuer on April 19, 1999, and upon surrender and cancellation of this Series 1999B Bond. Upon such transfer a new Series 1999B Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Series 1999B Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Series 1999B 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 West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government 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 the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Series 1999B Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS SERIES 1999B BOND IS ON A PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THE SEWER REVENUE BOND, SERIES 1999A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER DESCRIBED IN THE ORDINANCE ISSUED WITH RESPECT TO SUCH SERIES.

The initial address of United States Department of Agriculture-Rural Development for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

This Series 1999B Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

IN WITNESS WHEREOF, the CITY OF WAR has caused this Series 1999B Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Acting Recorder, all as of the date hereinabove written.

CITY OF WAR

(SEAL)

By: Thomas C. Hatcher

Mayor

SPECIMEN

P.O. Box 280

War, WV 24892

ATTEST:

By: Manuel Collins
Acting Recorder

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$34,416.00	6/25/99		
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
		(6) \$	

TOTAL \$ _____

(Form of Assignment)

SPECIMEN
ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: _____

In the presence of:

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.	Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.	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.
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 board; organization of board; qualifications, terms and compensation of members.
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	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.

- Sec.
 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
 16-13-22a. Grants, loans and advances.
 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.

- Sec.
 16-13-22g. Covenants with bondholders
 16-13-23. Article deemed full authority for construction, etc., of works and issuance 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. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Constitutionality. — 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. 105 (1957).

Legislative intent to protect municipalities from general obligations. — 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. Att'y Gen.*, April 3, 1979.

No conflict with statutory limitations on expenditure of tax funds. — 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).

Limitation imposed by article read into agreement with federal works administrator. — 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).

Municipality may not compel nonresidents to connect with a municipal sewer extended without its corporate limits. 48 *Op. Att'y Gen.* 19 (1958).

Ordinance held valid. — An ordinance of a municipal corporation, creating a sanitary board and authorizing such sanitary board to enter into contracts for the construction of a sewage 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).

§ 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, right 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 (§ 8-20-1b), 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.)

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-2, 16-13-16, 24-1-1, 24-2-1, and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

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 nec-

essary 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. Craighead*, 125 W. Va. 484, 24 S.E.2d 908 (1943).

§ 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 (§ 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.)

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-1, 16-13-16, 24-1-1, 24-2-1 and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

Quoted in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1963).
Cited in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

§ 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 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. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133.)

Contractor is not entitled to governmental immunities of municipality. — 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).

And is liable on contract with 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 sewage 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.)

A municipality is authorized to incur obligations for the purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from the proceeds of revenue bonds, and not in any way from 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).

And may obtain advances by any procedure it may see fit to adopt. — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sani-

tary board in accordance with the provisions of §§ 16-13-1, 16-13-18 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).

United States entitled to recover advances made by federal works agency. — The United States was held entitled to recover from a city the amount of three advances of money made to the city by the federal works agency for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, and the city sanitary board was ordered to issue a requisition to the trustees, into whose hands proceeds of future bond issues came, to repay such advances out of any funds in its hands comprising proceeds of revenue bond issues. *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 Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

Stated in *State ex rel. City of Wheeling v. Renick*, 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.)

Expenses incurred in "determining the feasibility or practicability of the enterprise." — 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).

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. The provisions of this article become a part of the contract between the municipality and the bondholders as effectually as if written verbatim in the bonds. The bondhold-

ers 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*, 114 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).

Contractual obligation between municipalities not relieved by inability of town to sell revenue bonds. — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town may 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, and the fact that the town was unable to sell revenue bonds because

it was not allowed to have part ownership in the treatment plant or interceptor sewers did not relieve the town of its contractual obligation when the city offered to buy the revenue bonds issued by the town. Since the contracts were authorized by statute and were thus not ultra vires, even if the contracts were not formally approved by ordinance, the municipalities were estopped from asserting any invalidity of the contracts on such ground. *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 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 cease to be such officers, before delivery of such bonds, such signatures 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 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 bonds 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 appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

Quoted in *United States v. City of Charleston*, 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.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.07.

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-1, 16-13-2, 24-1-1, 24-2-1, and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

Municipal sewer system is subject to jurisdiction of public service commission. 45 Op. Att'y Gen. 642 (1954).

Hence, municipality is required to file its rates with the commission for approval in accordance with § 24-2-1 et seq. 45 Op. Att'y Gen. 642 (1954).

Jurisdiction to enforce lien. — 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. Craighhead*, 125 W. Va. 484, 24 S.E.2d 908 (1943).

Discrimination not shown. — Charges made against the users of a city sewage 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 gallonage 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 assessed 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).

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).

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

The municipality shall be subject to the same charges and rates established as hereinbefore 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.)

Effect of article generally. — 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).

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).

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. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

In conferring such power and authority upon a municipality by this article, the legislature did not create, or intend to create, any repugnancy or inconsistency between the provisions

of this article and the pertinent provisions of chapter 24, or to repeal any of those provisions of that chapter. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Public service commission may order 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 its 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. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Sanitary board may be incorporated and domesticated in adjoining state. — Since the incorporation of its sanitary board and its domestication in the state of Virginia was the only plan by which the power intended to be granted by the legislature 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).

Member of city council may not serve as consulting engineer to the sanitary board on

city sewer project. 49 Op. Att'y Gen. 60 (1961).

Mayor and city manager may not both be appointed to municipal sanitary board.

— 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. Att'y Gen. 217 (1967).

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

Applied in *Houchins v. City of Beckley*, 127 W. Va. 306, 32 S.E.2d 286 (1944).

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

§ 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.)

§ 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 abolition 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 81(a)(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 indenture pertaining thereto 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 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. 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. Renick, 145 W. Va. 640, 116 S.E.2d 763 (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 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 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 proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal bond commission by expending and paying said costs and expenses of construction and operation in 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 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.)

Effect of amendment of 1994. — The amendment substituted "director of the division of environmental protection or the environmental quality board" for "chief of the division of water resources or the state water resources board" twice preceding the two provisos and for "state water resources board" once in each proviso; substituted "municipal bond

commission" for "state sinking fund commission"; deleted "however" in the first proviso; and made other minor changes.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.07.

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.

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| <p>Sec.
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 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; extraterritorial powers.
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.</p> | <p>Sec.
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; liberal construction; district to be public instrumentality; tax exemption.
16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, 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.</p> |
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§ 16-9A-1

PUBLIC HEALTH

§ 16-9A-1. Legislative intent.

Secondary smoke as battery, 46 ALR5th 813. W. Va. Law Review. — Hall, "Secondhand

Smoke as an Issue in Child Custody/Visitation Disputes," 97 W. Va. L. Rev. 115 (1994).

§ 16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.

ALR references — Secondary smoke as battery, 46 ALR5th 813. W. Va. Law Review. — Hall, "Secondhand

Smoke as an Issue in Child Custody/Visitation Disputes," 97 W. Va. L. Rev. 115 (1994).

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

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

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 dis-

trict court implicitly rejected the commission's interpretation. City of Charleston v. Public Serv. Comm'n, 57 F.3d 385 (4th Cir.), cert. denied. — U.S. —, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec. 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.

Sec. 16-13A-4. Board chairman; members' compensation; procedure; district name.
16-13A-7. Acquisition and operation of district properties.
16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.
16-13A-25. Borrowing and bond issuance; procedure.

between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary. (1989, c. 54.)

§ 31-15-29. Audits.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. (1989, c. 54.)

§ 31-15-30. Projects not to be considered public improvements.

No project, enterprise or business facility which conducts as its primary activity a manufacturing process or other nongovernmental or nonpublic activity may be deemed to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code. (1989, c. 54.)

§ 31-15-31. Foreign trade zones; authority approval.

Any public corporation located in the state is hereby authorized to apply for, develop, maintain and operate a foreign trade zone in the state pursuant to and in accordance with all applicable provisions of federal law. Provided, That any public corporation desiring to apply for or develop a foreign trade zone must first receive the approval of the authority. (1989, c. 54.)

§ 31-15-32. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable. (1989, c. 54.)

§ 31-15-33. Construction.

The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three [§ 31-15-3] of this article. (1989, c. 54.)

ARTICLE 15A.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

Sec.	Short title.	Sec.	fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-1.	Definitions.	31-15A-10.	Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-2.	West Virginia infrastructure and jobs development council continued; members of council; staff of council.	31-15A-11.	Reservation of funds for projects and infrastructure projects.
31-15A-3.	Development of guidelines and preliminary application for funding assistance.	31-15A-12.	Additional powers of water development authority.
31-15A-4.	Requirements for project funding assistance; review of project preliminary applications by council.	31-15A-13.	Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-5.	Powers, duties and responsibilities of the council generally; comprehensive assessment.	31-15A-14.	Termination or dissolution.
31-15A-6.	Current and prospective planning; roads and highways; report to division of highways.	31-15A-15.	Projects not to be considered public improvements; competitive bid requirements.
31-15A-7.	Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.	31-15A-16.	Dedication of severance tax proceeds.
31-15A-8.	Infrastructure fund; deposits in		

§ 31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act." (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-2. Definitions.

For purposes of this article:

- (a) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;
- (b) "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any

buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(c) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(d) "Division of environmental protection" means the division of environmental protection established under article one [§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(e) "Division of health" means the division of health created in article one [§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Economic development authority" means the economic development authority established under article fifteen [§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(g) "Emergency project" means a project which the council has determined (i) is essential to the immediate economic development of an area of the state and (ii) will not likely be developed in that area if construction of the project is not commenced immediately;

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

(i) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(j) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(k) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovating, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

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

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

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

(o) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

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

(q) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a waste water facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(r) "State development office" means the West Virginia development office established under article two [§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(s) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commis-

tives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of trustees of the state college system and one representative of the board of directors of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

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

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen § 31-15-1 et seq., chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

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

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. The for "shall be" in the second sentence, in (d), amendment, effective March 10, 1995, in (a), substituted "eleven members" for "nine members" and substituted "is" for "are" following "shall consist of," substituted the first sentence and substituted "is" for "are" following "shall consist of," substituted

sion, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project,

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

(u) "Water development authority" means the West Virginia water development authority established under article five-c (§ 20-5C-1 et seq., repealed), chapter twenty of this code, or any successor to all or any substantial part of its powers and duties; and

(v) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26.)

Editor's notes. — Former § 20-5C-1 et seq., 61. For provisions similar to former § 20-5C-1 referred to in (u), was repealed by Acts 1994, c. et seq., see § 22C-1-1 et seq.

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

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

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district. Provided, however, That after the expiration of the term of office of the members first appointed as representa-

project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project, and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article. (1994, 1st Ex. Sess., c. 26.)

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

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application. Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

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

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

"four members" for "two members" preceding made minor punctuation changes; substituted "representing the general public", added the "six members" for "five members" in the second proviso at the end of the first sentence, and sentence in (c); and rewrote (d), (e), and (g).

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

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six [§ 31-15A-6], of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency. (1994, 1st Ex. Sess., c. 26.)

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

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

- (1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;
- (2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;
- (3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and
- (4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

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

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not

only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate. (1994, 1st Ex. Sess., c. 26.)

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

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

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

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

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

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (k), section two [§ 31-15A-2(k)] of this article and to include a water facility project as defined in subsection (m), section two [§ 31-15A-2(m)] of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subdivision (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26.)

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

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues

After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account. Provided, That at no time may the balance of the restricted account exceed one million dollars.

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

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality. (1994, 1st Ex. Sess., c. 26.)

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

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or waste water facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven [§ 24-2-1], article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant

authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

- (1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;
- (2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;
- (3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and
- (4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

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

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

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration [office abolished], where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Editor's notes. ... The bracketed words were inserted by the editor. The office of the commissioner of finance and administration was abolished, and the duties of that office were transferred to the secretary of administration. See § 5A-1-2.

received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four [§ 31-15B-4] of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b [§ 31-15B-1 et seq.] of this chapter.

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

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen [§ 31-18-1 et seq.] chapter thirty-one of this code.

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

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development

of this chapter" in the first sentence of (c); substituted "the" for "such" preceding "loan guarantee" in (d)(2); and added (f) and (g).

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

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor. Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council. Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

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

adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) The council shall affix a mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. The mandatory minimum utility rate shall be established by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The rule shall provide that the mandatory minimum utility rate be based upon a uniform statewide percentage of the median household income in a particular geographic area which is rationally related to the geographic area of the project to be served.

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

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the pre-application would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the pre-application process from moneys available in the infrastructure fund for making loans. Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total pre-application cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the pre-application process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The time, and shall be submitted in the manner and amendment, effective March 10, 1995, in (a), on the preliminary application form" in the divided the former first sentence into the third sentence, and added the last sentence; present first two sentences, added the language added the provision and made minor punctuation beginning "any moneys disbursed" at the end of the first sentence, substituted "project sponsor" (c), (d), and (e).
Editor's notes. — Section 501 of the Internal Revenue Code of 1986, referred to in (a), is substituted "on preliminary application forms" for "or projects from time to time to" codified at 26 U.S.C. § 501.

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

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (m), section two [§ 31-15A-2(m)] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (k), section two [§ 31-15A-2(k)] of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article. Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, commendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26.)

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

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article. (1994, 1st Ex. Sess., c. 26.)

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

No part of the infrastructure fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is author-

ized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-14. Termination or dissolution.

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors. (1994, 1st Ex. Sess., c. 26.)

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

(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code, as a result of such financing.

(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond. Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor

Sec. 31-15B-9. Refunding bonds.
 31-15B-10. Termination or dissolution.
 31-15B-11. Treasurer to determine financial advisor.
 31-15B-12. Governor to determine bond counsel.
 31-15B-13. Approval and payment of all necessary expenses.

§ 31-15B-1. Definitions.

For purposes of this article and article fifteen-a [§ 31-15A-1 et seq.] of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3], article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two [§ 31-15B-2] of this article;

(d) "Water development authority" means the West Virginia water development authority established under article one [§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties. (1995, c. 130.)

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which sixteen million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county.

without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state. (1994, 1st Ex. Sess., c. 26.)

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

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§ 11-13A-1 et seq.], chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited: Provided, however, That the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a of said article thirteen-a [§ 11-13A-20a] shall remain dedicated for the purposes set forth in said section twenty-a.

(c) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The to "fund created pursuant to" and substituted amendment, effective March 10, 1995, in (b), "section three, article fifteen-b of this chapter" inserted "general obligation debt service" prior for "section nine of this article"; and added (c).

ARTICLE 15B.

INFRASTRUCTURE BONDS.

Sec. 31-15B-1. Definitions.
 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.
 31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.
 31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.
 31-15B-5. Covenants of state.
 31-15B-6. Sale by governor; minimum price.
 31-15B-7. Prohibition on funds inuring to the benefit of or being distributable

district or municipality thereof, which fact shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state. (1995, c. 130.)

§ 31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.

There is hereby created a special account in the state treasury, which shall be designated and known as the "West Virginia Infrastructure General Obligation Debt Service Fund", into which shall be deposited amounts pursuant to the provisions of section sixteen (§ 31-15A-16), article fifteen-a of this chapter, as well as any amounts appropriated by the Legislature. (1995, c. 130.)

§ 31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.

All money from any and all appropriations made by the state, all moneys transferred pursuant to the provisions of section sixteen (§ 31-15A-16), article fifteen-a of this chapter and all moneys from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon shall be deposited into the infrastructure general obligation debt service fund. Moneys shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the infrastructure general obligation debt service fund shall be deposited in the state treasury to the credit thereof.

This fund shall be applied by the treasurer to the payment of the principal and interest on such bonds as shall become due as herein provided. Any funds remaining after certification of the amount necessary for the payment of principal and interest as provided by section sixteen, article fifteen-a and expenses authorized pursuant to section thirteen (§ 31-15B-13) of this article shall be deposited to the credit of the infrastructure fund. (1995, c. 130.)

§ 31-15B-5. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any

year only to the extent that the moneys transferred to the infrastructure general obligation debt service fund as provided in section sixteen (§ 31-15A-16), article fifteen-a of this chapter which are irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of any bond becoming due and payable in such year are insufficient therefor. (1995, c. 130.)

§ 31-15B-6. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as the council, by resolution, may determine necessary to provide funds for purposes set forth in this article and article fifteen-a (§ 31-15A-1 et seq.) of this chapter. Sales shall be at not less than par and accrued interest.

The bonds must be offered for competitive bids from recognized financial investment institutions before the bonds may be sold: Provided, That the bid process is not subject to the provisions of article three-a (§ 5A-3A-1 et seq.), chapter five-a of this code. Any and all of the bids may be rejected. If the bonds are not sold pursuant to the competitive bid process, the bonds may, within sixty days after the date the bids are received, be sold at private sale: Provided, however, That no private sale shall be made at a price less than the highest bid received. (1995, c. 130.)

§ 31-15B-7. Prohibition on funds inuring to the benefit of or being distributable to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.

No part of the infrastructure fund shall inure to the benefit of or be distributable to the commissioners of the public service commission, the council, or the West Virginia water development authority's directors or officers. The council may approve and the water development authority make loans and exercise other powers as previously specified in furtherance of their corporate purpose: Provided, That no loans shall be made, nor shall any property be purchased or leased from, or sold, leased or otherwise disposed of, to any commissioner, director or officer of the council, the public service commission or the West Virginia water development authority. (1995, c. 130.)

§ 31-15B-8. Infrastructure bonds lawful investments.

All infrastructure bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies. (1995, c. 130.)

§ 31-15B-9. Refunding bonds.

Any infrastructure general obligation bonds which are outstanding may at any time be refunded by the issuance of refunding bonds in an amount deemed necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish the purpose of this article and article fifteen-a [§ 31-15A-1 et seq.] of this chapter; and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure general obligation bonds to be refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant to this article shall be payable from the infrastructure general obligation bond debt service fund, and shall be subject to the provisions contained in section eleven [§ 31-15A-11], article fifteen-a of this chapter and shall be secured in accordance with the provisions of this article. (1995, c. 130.)

§ 31-15B-10. Termination or dissolution.

Upon the termination or dissolution of the West Virginia water development authority, all rights and properties of the West Virginia water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of bondholders, lienholders and other creditors. (1995, c. 130.)

§ 31-15B-11. Treasurer to determine financial advisor.

The treasurer shall select a competent person or firm to serve as financial advisor for the issuance and sale of general obligation bonds issued pursuant to this article. (1995, c. 130.)

§ 31-15B-12. Governor to determine bond counsel.

The governor shall select a competent person or firm to serve as bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article three [§ 5-3-1 et seq.], chapter five of this code, bond counsel may represent the council in court, render advice to the council and provide other legal services as may be requested by the council regarding any bond issuance pursuant to this article and all other matter relating to the bond issue. (1995, c. 130.)

§ 31-15B-13. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any general obligation bonds pursuant to this article shall be paid out of the infrastructure general obligation debt service fund. The amount of any expenses incurred shall be certified to the water development authority. (1995, c. 130.)

ARTICLE 16.

WEST VIRGINIA STEEL FUTURES PROGRAM.

Sec. 31-16-1.	Legislative intent; purpose and administration.	Sec. 31-16-3.	Responsibilities of commission.
31-16-2.	Steel advisory commission; membership, appointment, terms, quorum and selection of officers.	31-16-4.	Steel futures program.
		31-16-5.	Continuation of program.

§ 31-16-1. Legislative intent; purpose and administration.

The Legislature recognizes that the steel industry plays a significant role in West Virginia's economy, and the industry's survival and success is of significant importance to the residents and the tax base of the state. Because of this significant economic role, there is hereby created in the West Virginia department of commerce, labor and environmental resources [abolished] a steel advisory commission and a new program entitled "The Steel Futures Program". The purpose of the commission and the program is to preserve and improve the economy of the state by promoting employment and increased productivity, thereby ensuring continued economic development consistent with these goals, and to maintain a high standard of living for the residents of the state. The commission, through the steel futures program, may supplement any other enterprise assistance program administered by the West Virginia department of commerce, labor and environmental resources [abolished]. The steel futures program shall be administered so as to provide financial and technical assistance as provided in this article to increase the competitiveness of existing steel and steel-related industries within the state and to encourage the establishment and development of new steel and steel-related industries within the state. (1993, c. 128.)

Editor's notes. — Former article 16, §§ 31-16-1 to 31-16-14 (enacted by Acts 1963, c. 22), concerning the West Virginia Forest Industries Industrial Foundation Act, was repealed by Acts 1989, c. 54. For provisions concerning the West Virginia economic development authority, see § 31-15-1 et seq. The bracketed words were inserted by the editor. See § 5F-2-1.

§ 31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection of officers.

(a) There is hereby created the West Virginia steel advisory commission within the department of commerce, labor and environmental resources [abolished], which shall consist of thirteen members. The secretary of the department of commerce, labor and environmental resources [office abolished] or his or her designee shall be a member of the commission and shall serve as its chairperson. Eight members shall be appointed by the governor with the advice and consent of the Senate. At least four of the members appointed by the governor shall be senior management representatives of steel manufacturing